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2 either way; correct?

3 A. Yeah, I don't remember. I don't  
4 remember us discussing that.

5 Q. Now -- and we're almost done, I  
6 promise. I'm just going to -- I don't know how  
7 to ask this question, so I'm just going to try  
8 to do my best.

9 Prior to the default on December 31,  
10 2020, did Mr. Seery ever tell you any words to  
11 the effect that you or someone at Highland  
12 should ensure that NexPoint doesn't make its  
13 payment?

14 A. No.

15 Q. Did you have any hint or any belief  
16 that anyone at NexPoint -- I'm sorry, strike  
17 that.

18 Did you have any reason to believe  
19 that anyone with Highland was actively trying  
20 to get NexPoint to make that default by not  
21 paying on December 31?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Are you asking, did any Highland  
25 employees actively work to make -- to

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2 somehow --

3 Q. Yes. Let me take a step back. Let  
4 me take a step back.

5 So you are aware now that as a  
6 result of that default, what was still some  
7 25-year note was accelerated and became  
8 immediately due. You are aware of that now;  
9 right?

10 A. Yes.

11 Q. And can you see how someone at  
12 Highland might actually have been pleased with  
13 that development?

14 MR. MORRIS: Objection to the form.

15 Q. Not that they were --- not that they  
16 were pleased, but you can see how someone at  
17 Highland might have been pleased with that  
18 development?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 MS. DANDENEAU: Object to form.

22 A. I don't know how they would have  
23 reacted to that.

24 Q. Okay. But you're not -- you're not  
25 aware of any instructions or any actions being

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2 given or taken at Highland by Mr. Seery, the  
3 independent board, DSI, that -- that would have  
4 basically led Highland to ensure that NexPoint  
5 would fail to make that payment?

6 A. I'm not aware.

7 Q. In other words, there wasn't a trick  
8 or a settlement; right?

9 MS. DEITSCH-PEREZ: Objection to  
10 form.

11 MS. DANDENEAU: Object to form.

12 MR. MORRIS: Object to form.

13 A. I'm not aware.

14 Look, I'm not aware. I'm not in  
15 every conversation. I mean, and I'm just --  
16 again, I'm sitting at home. It is the end of  
17 the year. Again, I'm not aware.

18 Q. That is a perfectly legitimate  
19 answer. I don't know why -- why you think  
20 otherwise.

21 Okay. Just give me one second to  
22 compose my thoughts.

23 MS. DEITSCH-PEREZ: While you're  
24 taking your one second, why don't we take  
25 three minutes. I will be right back.

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2 VIDEOGRAPHER: Do we want to go off  
3 the record?

4 MR. RUKAVINA: Yes.

5 VIDEOGRAPHER: All right. We're  
6 going off the record at 6:27 p.m.

7 (Recess taken 6:27 p.m. to 6:30 p.m.)

8 VIDEOGRAPHER: We are back on the  
9 record at 6:30 p.m.

10 MR. HORN: Is Deb back?

11 MS. DANDENEAU: Are you asking about  
12 me? I'm here.

13 MR. HORN: Oh, okay. I don't see  
14 you, sorry.

15 Q. Actually, yeah, Mr. Waterhouse, so  
16 when you had --

17 MS. DANDENEAU: Are you asking about  
18 Deb Dandeneau or Deborah? I mean, there  
19 are a lot -- as we talked about, a lot of  
20 Debs. I'm here.

21 MS. DEITSCH-PEREZ: I'm here.

22 MR. HORN: Yes, I was asking about  
23 DDP.

24 MS. DEITSCH-PEREZ: Oh, DDP is here.

25 MR. HORN: Okay. Here we go. I'm

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2 going back on mute.

3 MS. DANDENEAU: Get the right  
4 nomenclature.

5 Q. Mr. Waterhouse, on January 12th,  
6 2021, when you had those talks with Mr. Dondero  
7 about the \$1.4 million payment, did you have a  
8 communication or a conversation with Mr. Seery  
9 about that payment after January 12th, 2021?

10 A. I don't recall.

11 Q. Well, in response to Mr. Dondero  
12 reaching out to you, do you recall on that day,  
13 January 12th, talking to Mr. Seery or anyone at  
14 Highland other than the email chain we just saw  
15 about Mr. Dondero's call with you?

16 A. Did I talk to -- I spoke with  
17 Kristin -- I don't know if I spoke to her. I  
18 likely spoke to Kristin Hendrix because we had  
19 to get the wire on NexPoint's behalf to make  
20 the payment to Highland.

21 Q. So it is true, then, that -- that  
22 employees of the debtor did actually cause that  
23 payment to be made when it was made after  
24 January 12th?

25 A. Yes, I mean, we -- we -- as I

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2 testified earlier, we provided that accounting  
3 finance treasury function as -- under the  
4 shared services agreement. And so once I  
5 got the -- I talked to Jim, got the approval to  
6 make this payment, we have to then make the  
7 payment, or the team does, and so the payment  
8 was made.

9 Q. Okay. But -- okay. And -- and  
10 sitting here right now, after Jim called you,  
11 you don't remember talking to anyone other than  
12 the -- the couple of people you mentioned,  
13 talking to anyone about something to the effect  
14 that, hey, Jim wants to make this payment now?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I don't -- I don't recall.

18 Q. And does that include legal counsel?

19 Without going into any detail, on  
20 January 12th or before that payment was made,  
21 did you consult with legal counsel about  
22 anything having to do with the \$1.4 million  
23 payment?

24 A. I don't recall.

25 Q. Okay. Thank you, sir, for your

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2 time.

3 MR. RUKAVINA: Pass the witness.

4 MR. MORRIS: I just have a few  
5 questions, if I may.

6 MS. DEITSCH-PEREZ: Don't you go at  
7 the end?

8 MR. MORRIS: Oh, I apologize. He is  
9 your witness. I'm surprised you want to  
10 ask him questions, but go right ahead.

11 MS. DEITSCH-PEREZ: Just have a  
12 couple of things.

13 MR. RUKAVINA: And I will just  
14 object to that, that he's our witness.  
15 That's not --

16 MR. MORRIS: I'm not talking to you.  
17 I'm not talking to you.

18 MS. DANDENEAU: Also, Mr. Morris, it  
19 is -- it is --

20 MS. DEITSCH-PEREZ: He is not my  
21 witness. He's been subpoenaed by you.  
22 Okay?

23 That is no offense, Mr. Waterhouse,  
24 I'm -- I'm not -- okay. Anyway.

25 EXAMINATION

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2 BY MS. DEITSCH-PEREZ:

3 Q. Good evening. I'm very sorry to be  
4 going last and I know you have had a long and  
5 taxing day, so I thank you for indulging me.

6 The kinds of services that you  
7 describe that the -- that Highland provided for  
8 NexPoint, did Highland also provide similar  
9 services to that to HCRE and HCMS?

10 A. Yes.

11 MR. MORRIS: Objection to the form  
12 of the question.

13 Q. What kind of services did Highland  
14 provide to HCRE and HCMS?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 MS. DEITSCH-PEREZ: What is your  
18 objection, John?

19 MR. MORRIS: It is vague and  
20 ambiguous. Unlike the advisors and  
21 NexPoint, they actually had shared services  
22 agreements.

23 MS. DEITSCH-PEREZ: I got -- I  
24 understand your objection. That is fine.

25 Q. Let's take them one at a time.



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2 What kinds of services did Highland  
3 provide to HCRE?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. HCMS, Highland employees provided  
7 accounting services, treasury management  
8 services, potentially legal services. I  
9 don't -- but I wouldn't have been directly  
10 involved in that. But as far as the teams that  
11 I manage, it was accounting, treasury, things  
12 of that nature.

13 Q. Okay. And that was for HCM, LLP --

14 A. And -- and, sorry, it would also be  
15 any asset valuation if needed as well.

16 Q. Okay. We went back and forth on  
17 each other and I apologize, so just to clarify.

18 You were talking about the services  
19 that Highland Capital Management provided to  
20 HCMS; is that right?

21 A. HCMS. So, again, yes. And  
22 accounting, treasury, valuation, and also tax  
23 services too.

24 Q. Okay.

25 A. Tax services. Look, I'm expanding

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2 this, their HR services as well.

3 Q. Okay. And did that include bill  
4 paying?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 Q. Did the services that HCM provided  
8 to HCMS include bill paying?

9 MR. MORRIS: Objection to the form  
10 of the question.

11 A. Yes.

12 Q. And did the services that HCMLP  
13 provided to HCMS include scheduling upcoming  
14 bills?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes.

18 Q. And did HCMLP regularly pay -- cause  
19 to be paid the payments on loans HCMS had from  
20 HCMLP?

21 MR. MORRIS: Objection to the form  
22 of the question.

23 A. Yes.

24 Q. Typically -- if there is a  
25 typically, how far in advance of due dates did

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2 HCMLP cause HCMS to pay its bills?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. I mean, it -- it -- it depend -- it  
6 depended on the nature of the payment and the  
7 vendor, but, you know, if there were -- if  
8 there were larger scheduled payments, you know,  
9 I would like to give at least 30 days notice.

10 And that is -- that is kind of my  
11 rule of thumb so no one is surprised.

12 Q. Okay. And was it generally HCMLP's  
13 practice to timely pay HCMS' bills?

14 MR. MORRIS: Objection to the form  
15 of the question.

16 A. It -- it -- it -- that depended on  
17 the nature of the payment.

18 Q. Okay. And can you explain what you  
19 mean by that?

20 A. Yeah, I mean if -- if it was -- I  
21 mean -- if there was some professional fees  
22 that weren't -- you know, they were due but  
23 they weren't urgent, those fees may not be paid  
24 as timely as others that have a due date or --  
25 or things like that.

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2 Q. Okay. Are loan payments the kinds  
3 of thing that HCMLP would pay on time because  
4 of potential consequences of not paying on  
5 time?

6 MR. MORRIS: Objection to the form  
7 of the question.

8 A. Yes. As I testified earlier, we  
9 would want to give, you know, notice on -- on  
10 -- on larger payments and -- and things of that  
11 nature so we didn't miss due dates.

12 Q. Okay. And over the course of time,  
13 did HCMLP generally pay HCMS' loan payments in  
14 a timely fashion?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I can't remember specifically, but  
18 generally, yes.

19 Q. Okay. Now, did HCMLP provide  
20 similar services to HCRE that you have  
21 described it provided to HCMS?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes, but I don't think it -- it  
25 provided -- I don't think it provided HR

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2 services.

3 Q. Can you describe the accounting and  
4 treasury services that HCMLP provided for HCRE?

5 A. Yeah, it -- it would provide  
6 bookkeeping services on a -- on a periodic  
7 basis. It would make payments, you know, as  
8 needed.

9 Q. Okay. So did it provide --

10 A. And -- and I believe it -- it -- it  
11 provided tax services as well.

12 Q. Okay. And so did it provide the  
13 same kind of bill -- did HCMLP provide the same  
14 kind of bill-paying services for HCRE that it  
15 provided for HCMS and NexPoint?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. Yes.

19 Q. And over the course of time, did  
20 HCMLP generally cause to be made the loan  
21 payments that HCRE owed to HCMLP?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes.

25 Q. Did HCMLP make loan payment -- the

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2 loan payment that was due from HCMS to HCMLP in  
3 December of 2020?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. I don't believe that payment --  
7 payment was made.

8 Q. Okay. And when HCMLP caused HCMS in  
9 the past to make loan payments, whose money did  
10 it use to make those payments?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. It was the -- the money in HCMS's  
14 operating account would be made to that --  
15 those moneys would be used to make payment to  
16 Highland Capital Management.

17 Q. Okay. And Highland -- is it correct  
18 that Highland Capital Management personnel had  
19 the access to HCMS's accounts to be able to  
20 cause such payments to be made?

21 A. Yes, Highland personnel had access  
22 to those accounts.

23 Q. Okay. And so now for HCRE, whose  
24 money was used when HCMLP caused HCRE  
25 payments -- loan payments to Highland to be

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2 made?

3 MR. MORRIS: Objection to the form

4 of the question.

5 A. It was -- it was cash in HCRE's bank  
6 account that would be used to make payments to  
7 Highland Capital Management.

8 Q. Okay. And so did Highland Capital  
9 Management have access to HCRE's funds in order  
10 to be able to make such payments?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. Personnel at Highland Capital  
14 Management had access to HCRE's bank account to  
15 effectuate the payments.

16 Q. Okay. And was the payment due from  
17 HCRE to HCMLP due in December of 2020 made?

18 A. It --

19 Q. In December of 2020.

20 A. It was not.

21 Q. Okay. And was there money in HCRE's  
22 account that would have enabled the payment to  
23 be made had HCM personnel attempted to make the  
24 payment?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. I -- I don't recall.

4 Q. Do you have any reason to believe  
5 that either HCRE or HCMS simply didn't have the  
6 funds on hand to make the December 2020  
7 payments?

8 A. I don't know.

9 Q. I guess I'm asking, do you have any  
10 reason to believe that they didn't have the  
11 funds?

12 A. We managed cash for so many  
13 different entities and funds, and I don't  
14 recall, you know, where the cash position was  
15 for HCRE and HCMS at 12/31/2020.

16 Q. Okay.

17 A. I just don't recall, and I don't --  
18 and I don't remember what the loan payment  
19 obligations were from HCRE to Highland, and  
20 from HCMS to Highland. I don't recall. I  
21 don't recall, I mean...

22 Q. Let me come at it a different way.  
23 Were the -- were the payments that would  
24 otherwise have been due in December of 2020  
25 made in January of 2021 for HCMS and HCRE?



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2 A. I believe the HCRE payment was made  
3 in January of 2021. I don't recall any  
4 payments being made from HCMS to Highland.

5 Q. If it -- how is it the HCRE payment  
6 came to be made? Why did you make it -- why  
7 did HCM make the payment in January of 2021?

8 A. Jim -- Jim called me and instructed  
9 me to -- to make the payment on behalf of HCRE,  
10 Jim Dondero -- Jim Dondero.

11 Q. Did he seem upset that -- that the  
12 payment had not been made?

13 A. Yeah. On the note that was, you  
14 know, that was the term note, yes, he -- he was  
15 displeased that the -- that the payment had not  
16 been made by year-end.

17 Q. Okay. And did you make the -- cause  
18 the payment to be made as -- as requested?

19 A. Yes.

20 Q. And did anyone else from HCM  
21 participate with you in causing the payment to  
22 be made to -- on the HCRE loan?

23 A. Yes. It would have been Kristin  
24 Hendrix. I -- again, I don't -- as I testified  
25 earlier, I'm not an officer of HCRE. I don't

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2 believe I'm an authorized signer. So I  
3 can't -- other personnel have to make payment  
4 from HCRE to -- to -- to -- to Highland.

5 Q. Okay. And in the conversation  
6 that -- that you had with Mr. Dondero when he  
7 requested the payment to be made, did you say  
8 to him words to the effect, Jim, this loan is  
9 going to stay in default, what are you making  
10 the payment for, anything like that?

11 A. No.

12 Q. In fact, did you have the impression  
13 from him that he thought that the loan would  
14 be -- the default would be cured by making the  
15 payment?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. Did I get the impression from Jim  
19 Dondero that the loan would be cured if the  
20 payment from HCRE --

21 Q. Yeah, if that is what he thought.

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. I didn't get any impression from him  
25 on that at the time.

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2 Q. Do you know whether there was an  
3 HCMS term loan that had a payment due in  
4 December of 2020?

5 A. I don't recall.

6 Q. Okay. And so the reason you don't  
7 recall whether or not there was a payment in  
8 January of 2021 is because you just don't  
9 remember whether there was such a loan at all?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. I don't remember. There is -- there  
13 is so many notes, and I mean, demands, and I  
14 don't -- I don't remember. It's a lot to keep  
15 track in your head.

16 Q. I understand, and -- and I hear your  
17 frustration when you have explained that the  
18 debtor has your documents and you don't, and so  
19 I fully appreciate it, and this is no knock on  
20 you. It's a knock on somebody else on this  
21 call.

22 MR. MORRIS: I move to strike. That  
23 was pretty obnoxious, but go ahead.

24 Q. Okay. But so, Mr. Waterhouse, if --  
25 if a payment on the HCMS loan was made in

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2 January of 2021, do you think it was part of  
3 the same conversation where Jim Dondero said,  
4 hey, why didn't that get paid, please make  
5 that -- get that payment done?

6 MR. MORRIS: I object to the form of  
7 the question.

8 A. Yes. Likely it would have been -- I  
9 mean, again, I don't recall a payment being  
10 made, but, you know, again, I don't remember  
11 everything.

12 Q. Okay. Did -- at the time you were  
13 communicating with Kristin Hendrix about the  
14 payment being made, whichever payments were  
15 made in January, did she say anything to you  
16 about the payments not curing the loan  
17 defaults?

18 A. No.

19 Q. Okay. All right. So I'm going to  
20 take you back to very early in the deposition  
21 when Mr. Morris was asking you about the --  
22 the -- the -- the agreement with respect to  
23 the -- the forgiveness element of the loans, so  
24 that is just to orient you.

25 Do you remember that there was a

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2 time that you and Mr. Dondero were  
3 communicating about potential means of  
4 resolving the Highland bankruptcy by what was  
5 colloquially referred to as a pot plan?

6 A. Yes.

7 Q. Okay. And can you tell me generally  
8 when that was?

9 A. Like mid -- mid 2020, sometime in  
10 2020, mid 2020.

11 Q. Okay. And did the process of trying  
12 to figure out what the numbers should be  
13 involve looking at what one should pay for the  
14 Highland assets?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. Yes.

18 Q. Okay. And did there come a time  
19 when you were proposing some potential numbers  
20 and Mr. Dondero said something to you like,  
21 well, why are you including payment for the  
22 related party notes, those, you know, were  
23 likely to be forgiven as part of my deferred  
24 executive compensation?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes, we did have that conversation.

4 Q. Okay. Was that conversation in  
5 connection with trying to figure out the right  
6 numbers for a pot plan?

7 A. Yeah. I mean, it was -- it was -- I  
8 mean, Jim -- Jim would ask for, you know,  
9 most -- most recent asset values, you know, for  
10 Highland, and -- and myself and the team  
11 provided those to him, so it was in that  
12 context.

13 Q. Okay. And does that refresh your  
14 recollection that these communications were in  
15 2020 rather than 2021?

16 MR. MORRIS: Objection to the form  
17 of the question.

18 A. The -- the -- the executive  
19 compensation discussions were definitely in  
20 2020.

21 Q. Okay. Now, did you ever make  
22 proposals that took into account Jim's comment  
23 that the notes were likely to end up forgiven  
24 as part of his compensation?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes, we -- the team and myself put  
4 together, you know, asset summaries of Highland  
5 at various times for all the assets of  
6 Highland, and not including the notes.

7 Q. Okay. And were those presentations  
8 communicated to -- to Mr. Seery?

9 A. No. Well, look, I didn't tell -- I  
10 didn't tell Mr. Seery. I don't know what  
11 Mr. Dondero did with the information.

12 Q. Okay.

13 A. I did not have conversations with  
14 Mr. Seery.

15 Q. Okay. Do you know who saw the  
16 presentations that you put together that didn't  
17 include the value of the related party notes?

18 A. We're talking presentations -- these  
19 are -- these are Excel spreadsheets?

20 Q. Uh-huh.

21 A. I don't know who -- these were given  
22 to -- to Jim Dondero. I don't know what was  
23 done with them after that.

24 Q. Okay. You also mentioned earlier  
25 that sometime during your tenure at Highland

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2 you knew of the practice of giving forgivable  
3 loans to executives.

4 MR. MORRIS: Objection to the form  
5 of the question.

6 Q. Can you -- can you tell me what you  
7 recall about that practice?

8 MR. MORRIS: Objection to the form  
9 of the question.

10 A. Yes, so there were -- there were --  
11 during my tenure at Highland, there were loans  
12 or -- given to employees that were later  
13 forgiven at a future date and time.

14 Q. Okay. And when the loans were  
15 given, did the notes, to your recollection, say  
16 anything about the potential forgiveness term?

17 MR. MORRIS: Objection to the form  
18 of the question.

19 A. When you say "did the notes," did  
20 the promissory notes detail the forgiveness?

21 Q. Yes.

22 A. Not that I recall.

23 Q. And until such time as whatever was  
24 to trigger the forgiveness occurred, were the  
25 notes bona fide notes as far as you were



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2 concerned?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. Yes, similar to -- yes.

6 Q. Okay. You were going to say similar  
7 to what?

8 A. Mr. Morris earlier today showed  
9 notes of the financial statements about various  
10 affiliate loans. I -- I -- I do recall these  
11 notes because I -- at that time personally  
12 worked on the -- the financial statements of  
13 Highland. That was, you know, in my role as a  
14 corporate accountant.

15 And there were -- those loans  
16 were -- to the partners were detailed in the  
17 notes to the financial statements, similar to  
18 what we went through earlier today in the prior  
19 testimony about what we saw with Highland  
20 and -- and -- and the -- and HCMFA.

21 Q. Is it fair to say that on Highland's  
22 balance sheet there were any number of assets  
23 that the value of which could be affected by  
24 subsequent events?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. Yes. I mean, yes, that -- there  
4 are. And that is -- yes.

5 Q. Okay. And is it typical accounting  
6 practice that until there is some certainty  
7 about those potential future events, that asset  
8 value listed on -- on the books doesn't take  
9 into account those potential future events?

10 MR. MORRIS: Objection to the form  
11 of the question.

12 A. Yeah, if those -- yes. If -- if  
13 those future events, you know, at the time of  
14 issuance are not known or knowable, like I  
15 discussed earlier with, like, market practice,  
16 asset dislocation, or, you know, I mean, things  
17 like that, you -- I mean, it -- it could affect  
18 its fair value --

19 Q. Okay.

20 A. -- in the future.

21 Q. And am I correct you wouldn't feel  
22 compelled to footnote in every possible change  
23 in -- in an asset when those possibilities are  
24 still remote?

25 MR. MORRIS: Objection to the form

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2 of the question.

3 A. The accounting standard is you have  
4 to estimate to the best -- you know, to -- to  
5 the best of your ability, the fair value of an  
6 asset as of the balance sheet date under --  
7 under GAAP.

8 Q. Did -- strike that.

9 Okay. Give me a minute. I'm  
10 close -- I'm close to done. Let me just go off  
11 and look at my notes for a second. So take two  
12 minutes.

13 VIDEOGRAPHER: We're going off the  
14 record at 7:02 p.m.

15 (Recess taken 7:02 p.m. to 7:03 p.m.)

16 VIDEOGRAPHER: We are back on the  
17 record at 7:03 p.m.

18 Q. Mr. Waterhouse, is it generally your  
19 understanding that people you work with now  
20 have been asking the debtor for full and  
21 unfettered access to their own former files?

22 MR. MORRIS: Objection to the form  
23 of the question.

24 A. Yes, I am -- I am generally aware.

25 Q. Okay. And do you think you could

1 WATERHOUSE - 10-19-21

2 have been better prepared for this deposition  
3 if the debtor had complied with those requests?

4 MR. MORRIS: Objection to the form  
5 of the question.

6 A. I -- I -- I most certainly -- yes.  
7 I mean, again, these are multiple years,  
8 multiple years ago, lots and lots of  
9 transactions.

10 You know, we asked about NAV errors  
11 and, you know, things like that and these  
12 are -- it would make this process a lot more --  
13 a lot easier and if we had -- if we had access  
14 to that.

15 Q. Okay. And has the debtor -- is the  
16 debtor suing you right now?

17 A. Yes.

18 Q. And is the debtor trying to renege  
19 on deals that it had previously made with you?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. Sorry, I need to -- it is my  
23 understanding that the litigation trust is  
24 suing me. And not being a lawyer, I don't  
25 know -- is that the debtor?

1 WATERHOUSE - 10-19-21

2 Is that -- I don't know the  
3 relationship. So, again, I'm not the lawyers.  
4 I've said many times. But my understanding is  
5 the litigation trust is suing me. I could be  
6 wrong there. I don't know.

7 Q. Okay. I understand.

8 Someone with some connection to the  
9 Highland debtor has brought a claim against  
10 you; is that fair?

11 MR. MORRIS: Objection to the form  
12 of the question.

13 A. Yes.

14 Q. Okay. And is there also some motion  
15 practice in the bankruptcy where the debtor or  
16 someone associated with the debtor is  
17 attempting to undo something that was  
18 previously resolved with you?

19 A. Yes.

20 Q. And so in one action somebody is  
21 associated with the debtors trying to --  
22 threatening you with trying to take money from  
23 you, and then in the other -- and trying to --  
24 and in the other they are threatening not to  
25 pay you things that had previously been agreed;

1 WATERHOUSE - 10-19-21

2 is that correct?

3 MR. MORRIS: Objection to the form  
4 of the question.

5 A. I want to be -- yes, I -- there  
6 is -- I'm being sued, again, on -- on something  
7 that was agreed to with Mr. Seery and myself.  
8 I don't -- I don't -- I don't own that claim.

9 Q. Okay.

10 A. To be transparent, I don't own that  
11 claim. So it is not my personal property.

12 Q. Okay.

13 A. And -- and being the nonlawyer, I  
14 don't know how I can get sued for something  
15 that I don't owe or, like, I don't own  
16 anything. I'm not the lawyer. But, I mean, if  
17 that is -- if I'm understanding the facts  
18 correctly.

19 Q. Okay. And the lawsuit that was  
20 filed that names you, that was just filed  
21 this -- this past week; is that right?

22 MS. DANDENEAU: Ms. Deitsch-Perez, I  
23 do want to interrupt at this point because  
24 just as I told Mr. Morris, that this is a  
25 deposition about the noticed litigation.

1 WATERHOUSE - 10-19-21

2 I really don't want to go -- go  
3 afield --

4 MS. DEITSCH-PEREZ: Yeah.

5 MS. DANDENEAU: -- and open up a  
6 whole new line of inquiry about the lawsuit  
7 or the -- the motion and the bankruptcy  
8 court. We will be here all night.

9 MS. DEITSCH-PEREZ: And I  
10 understand.

11 Q. My -- my point is: Do you feel  
12 like -- like there is some effort by these  
13 parties related to the debtor to intimidate  
14 you -- not that you -- I'm not saying you are  
15 or you aren't.

16 But do you feel like there is some  
17 effort to intimidate you and maybe an effort to  
18 deter you from being as prepared as you might  
19 be in this deposition?

20 MR. MORRIS: Objection to the form  
21 of the question.

22 A. I was -- I was surprised by the  
23 lawsuit, by me being named, because, again, I  
24 don't own the asset and things like that.  
25 Yeah, I just -- I want to move forward with my

1 WATERHOUSE - 10-19-21

2 life at Skyview.

3 MS. DEITSCH-PEREZ: Thank you.

4 THE WITNESS: Thank you.

5 FURTHER EXAMINATION

6 BY MR. MORRIS:

7 Q. If I may, I just have a few  
8 questions.

9 Mr. Waterhouse, we saw a number of  
10 documents that Mr. Rukavina put up on the  
11 screen where Ms. Hendrix would send you a  
12 schedule of payments that were due on behalf of  
13 certain Highland affiliates.

14 Do you remember that?

15 A. Yes.

16 Q. And in each instance she asked for  
17 your approval to make the payments; is that  
18 right?

19 A. Yes, she did.

20 Q. And was that the -- was that the  
21 practice in the second half of 2020 whereby  
22 Ms. Hendrix would prepare a list of payments  
23 that were due on behalf of Highland associates  
24 and ask for approval?

25 A. Yes.



1 WATERHOUSE - 10-19-21

2 Q. And I think you said that there was  
3 a -- a --

4 A. It was -- I think I testified to  
5 this earlier when we talked about procedures  
6 and policy, you know, again, I want to be  
7 informed of -- of -- of -- of -- of any  
8 payments that are going out. I want to be made  
9 aware of these payments, and that was just a  
10 general policy, not just for 2020.

11 Q. Okay. So it went beyond 2020?

12 A. Yes.

13 Q. Is that right?

14 A. Yes.

15 Q. Okay. And the corporate accounting  
16 group would prepare a calendar that would set  
17 forth all of the payments that were anticipated  
18 in the -- in the three weeks ahead; is that  
19 right?

20 A. I -- like I testified earlier, we  
21 had a corporate calendar that was set up, you  
22 know, to -- to provide reminders or, you know,  
23 of anything of any nature, whether it is  
24 payments or -- or financial statements or, you  
25 know, whatever it is, you know, to meet

1 WATERHOUSE - 10-19-21

2 deadlines.

3 I don't know how, as I testified  
4 earlier, how much they were using that  
5 calendar.

6 Q. Okay. But -- but you did get notice  
7 and a request to approve the payments that were  
8 coming due on behalf of Highland's affiliates.  
9 Do I have that right?

10 MS. DANDENEAU: Objection to form.

11 A. I mean, generally, yes. I mean, you  
12 know, as we saw with these emails, generally, I  
13 mean, did that encompass everything, no.

14 Q. Okay. Do you know why the  
15 payment -- do you know why there was no payment  
16 made by NexPoint at the end of 2020?

17 A. Yes. There was -- there was -- we  
18 talked about these agreements between the  
19 advisors and Highland, the shared services and  
20 the cost reimbursement agreement.

21 And in late 2020, there were  
22 overpayments, large overpayments that had been  
23 made over the years on these agreements, and it  
24 was my understanding that the advisors were --  
25 were talking with -- like Jim Seery and others

1 WATERHOUSE - 10-19-21

2 to offset any obligations that the advisors  
3 owed to Highland as offset to the overpayments  
4 on these agreements.

5 Q. Okay. Did you participate in any of  
6 those conversations?

7 A. I did not.

8 Q. Okay. Do you know -- do you recall  
9 that the -- at the end of November, the debtor  
10 did notice to the advisors of their intent to  
11 terminate the shared services agreements?

12 A. Like I testified earlier, there  
13 was -- the agreements weren't identical, from  
14 what I recall, and there is one that had a  
15 longer notice period, which I think had a  
16 60-day notice period. I don't recall which one  
17 that was, so not all of them were -- notice  
18 hadn't been given as of November 30th, for all  
19 of the agreements.

20 Q. Upon the receipt of the -- the  
21 termination notices that you recall, do you  
22 know if the advisors decided at that point not  
23 to make any further payments of any kind to  
24 Highland?

25 MR. RUKAVINA: Objection, form.

1 WATERHOUSE - 10-19-21

2 A. No. The advisors -- the advisors  
3 had stopped making payments prior to that  
4 notice.

5 Q. Okay. And how do you know that the  
6 advisors stopped making -- making payments  
7 prior to the notice?

8 A. I had -- I had a conversation  
9 with -- with Jim Dondero.

10 Q. And did Mr. Dondero tell you that  
11 the advisors would no longer make payments to  
12 Highland?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Yes, he -- he -- again, he said  
16 they -- they -- the advisors have overpaid on  
17 these agreements, to not make any future  
18 payments, and that there needs to be offsets,  
19 and they're working on getting offsets to these  
20 overpayment.

21 Q. Do you know if anybody ever  
22 instructed Highland's employees to make the  
23 payment that was due by NexPoint at the end of  
24 the year?

25 A. Did anyone instruct Highland's

1 WATERHOUSE - 10-19-21

2 employees to make that payment?

3 Q. Correct.

4 A. Anyone -- not that I'm aware.

5 Q. Were any of Highland's employees  
6 authorized to make the payments on behalf of  
7 its affiliates -- withdrawn.

8 Was any of Highland's employees  
9 authorized to effectuate the payment on behalf  
10 of NexPoint that was due at the end of the year  
11 without getting approval from either you or  
12 Mr. Dondero?

13 A. They had the -- they had the ability  
14 to make the payment, but they didn't -- you  
15 know, that -- that payment needed to be  
16 approved.

17 Q. Okay. And it needed to be approved  
18 by you or Mr. Dondero; is that right?

19 A. I mean, I'm not going to make the  
20 unilateral decision.

21 Q. Is that a decision that you  
22 understood had to be made by Mr. Dondero?

23 A. Yes. Sitting back in December of  
24 2020, the -- that -- there was this off --  
25 offset negotiation that -- that was happening,

1 WATERHOUSE - 10-19-21

2 so I mean, until those negotiations were  
3 resolved, you know, there wasn't any  
4 payments -- there weren't any payments.

5 Q. And -- and there were no payments  
6 until the negotiations were resolved because  
7 that was the directive that you received from  
8 Mr. Dondero; correct?

9 A. I don't think he said -- I mean, I  
10 think -- yeah, I mean -- I'm trying to recall  
11 the conversation. It was -- you know, there  
12 is -- there is these negotiations. There's --  
13 there needs to be these offsets. They're  
14 talking with the debtor. So, you know, until  
15 this is resolved, right, I mean, depending on  
16 how, whatever that resolution was, were we to  
17 take any action.

18 Q. Okay. How about with respect to  
19 HCMS, did HCMS have a term payment due at the  
20 end of the year?

21 A. Again, I don't -- I don't recall.

22 Q. Okay. You discussed briefly two  
23 payments that were made in January of 2021, one  
24 on behalf of NexPoint, and one on behalf of  
25 HCMS. Do I have that right?

1 WATERHOUSE - 10-19-21

2 A. No. The two payments I recall were  
3 NexPoint and HCRE.

4 Q. Okay. And those two payments --  
5 thank you for the correction. And those two  
6 payments were made because Mr. Dondero  
7 authorized those payments to be made; correct?

8 A. Yes.

9 Q. And they hadn't been made before  
10 that because Mr. Dondero had not authorized  
11 them to be made?

12 MS. DEITSCH-PEREZ: Object to the  
13 form.

14 A. Yes, because of these negotiations.

15 Q. Okay. Just a couple of more  
16 questions.

17 Did anybody, to the best of your  
18 knowledge, on behalf of HCMFA, ever tell the  
19 SEC that HCMLP was responsible for the mistakes  
20 that were made on the TerreStar valuation?

21 A. Did anyone from Highland on HCMFA's  
22 behalf tell the SEC that Highland -- that  
23 Highland was responsible for there -- I just  
24 want to make sure --

25 Q. It was a little bit different, so

1 WATERHOUSE - 10-19-21

2 let me try again.

3 A. These are very long questions, John.

4 I'm not trying to be --

5 Q. That is good. Do you know whether  
6 anybody -- do you know whether anybody on  
7 behalf of HCMS -- HCMFA ever told the SEC that  
8 Highland was the responsible party for the  
9 TerreStar valuation error?

10 A. Not that I'm aware.

11 Q. Okay. Did anybody on behalf of  
12 the -- on behalf of HCMFA ever tell the retail  
13 board that Highland was responsible for the  
14 TerreStar valuation error?

15 A. Not that I'm aware.

16 Q. Do you know if HCMFA made an  
17 insurance claim with respect to the damages  
18 that were incurred in relation to the TerreStar  
19 valuation error?

20 A. Yes.

21 Q. And do you know why they made that  
22 insurance claim?

23 A. Because there was an error. I  
24 mean --

25 Q. Was the insured's claim made -- was



1 WATERHOUSE - 10-19-21

2 the insurance claim made under HCMFA's policy?

3 A. Yes.

4 Q. Did HCMFA at any time prior to the  
5 petition date -- withdrawn.

6 You were asked a couple of questions  
7 where -- where you said that Mr. Dondero told  
8 you that he was ascribing zero value to the  
9 notes as part of a pot plan because he believed  
10 that the notes were part of executive  
11 compensation.

12 Do I have that right?

13 MS. DEITSCH-PEREZ: Object to the  
14 form.

15 A. Yes.

16 Q. Okay. Have you ever heard that  
17 before the time that Mr. Dondero told you that  
18 in the conversation about the pot plan?

19 A. Had I heard that prior to my  
20 conversation with Mr. Dondero?

21 Q. Yes.

22 A. No, I had not heard that prior.

23 Q. Okay. And that was in the context  
24 of his formulation of the settlement proposal;  
25 is that right?

1 WATERHOUSE - 10-19-21

2 A. I mean, generally, yes. You know,  
3 we were asked to provide asset values, right,  
4 and he was having settlement discussions.  
5 Again, I don't know who those went to  
6 ultimately. I don't recall.

7 MR. MORRIS: I have no further  
8 questions. Thank you very much for your  
9 patience. I apologize for the late hour.

10 MS. DEITSCH-PEREZ: John, you stay  
11 on about your email when --

12 MR. RUKAVINA: Hold on, I'm not  
13 done.

14 MS. DEITSCH-PEREZ: Oh, okay. Davor  
15 still has questions. Sorry. I was going  
16 to say both John and Davor, could you stay  
17 on afterwards just to talk about the  
18 requests.

19 FURTHER EXAMINATION

20 BY MR. RUKAVINA:

21 Q. Mr. Waterhouse, you were just now  
22 testifying about a discussion you had with  
23 Mr. Dondero where he said something like no  
24 more payments.

25 Do you remember that testimony?

1 WATERHOUSE - 10-19-21

2 A. Yes.

3 Q. Okay. And was that late November or  
4 early December of 2020?

5 A. It was, I would say, first or second  
6 week of November.

7 Q. Okay. Do you recall whether --  
8 whenever you had that discussion, whether  
9 Mr. Dondero had already been fired by the  
10 debtor?

11 A. Yes, I -- I believe he was not an  
12 employee of the debtor anymore at that time.

13 Q. And when you were discussing this  
14 with Mr. Dondero and he said no more payments,  
15 you were discussing the two shared services  
16 agreements and employee reimbursement  
17 agreements we testified -- you testified about  
18 before; is that correct?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. That is correct.

22 Q. And had your office or you -- and we  
23 will talk at a future deposition about the  
24 administrative claim.

25 But had -- by that time that you

1 WATERHOUSE - 10-19-21

2 talked to Mr. Dondero, had your office or you  
3 done any estimate of what the alleged  
4 overpayments were?

5 MR. MORRIS: Objection to the form  
6 of the question.

7 A. Yes, we had -- there was a -- there  
8 was a detailed analysis that was put together  
9 by David Klos at the time.

10 Q. And do you recall just generally  
11 what the total amount for both advisors of the  
12 overpayments was?

13 A. It was in excess of \$10 million.

14 Q. Was it in excess of \$14 million?

15 MR. MORRIS: Objection to the form  
16 of the question.

17 A. I -- I remember it was an  
18 eight-figure number. I don't remember  
19 specifically.

20 Q. Okay. And did you convey that  
21 number to Mr. Dondero when you had that  
22 conversation?

23 A. Yes.

24 Q. What was his reaction?

25 A. I mean, he wasn't happy.

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2 Q. Is it fair to say he was upset?

3 A. Yes.

4 Q. Did Mr. Dondero ever expressly tell  
5 you to not have NexPoint make the required  
6 December 31, 2020, payment?

7 A. Yes, I recall him saying don't make  
8 the payment because it was being negotiated, as  
9 I discussed with Mr. Morris, this offset  
10 concept. So there were obligations due by the  
11 advisors to Highland, they should be offset  
12 that -- you know, those obligations should be  
13 offset by this -- by this overpayment.

14 Q. And when did he tell you that?

15 A. I would say -- I would say around --  
16 probably December -- December-ish.

17 Q. Early December, late December?

18 A. I don't recall with as much  
19 specificity as -- as -- as -- as stopping the  
20 shared services payments, because we had  
21 actually made one shared services payment in  
22 November. So that is why I need to remember  
23 that one more clearly. I don't remember where  
24 exactly in December that conversation occurred.

25 Q. Did Mr. Dondero expressly use the

1 WATERHOUSE - 10-19-21

2 word "NexPoint" when he was saying don't make  
3 these payments?

4 MR. MORRIS: Objection to the form  
5 of the question, asked and answered.

6 A. Yeah, we were -- we were discussing  
7 advisor obligations. So it was -- you know, it  
8 was just obligations from the advisors.

9 And -- and he specifically talked  
10 about the NexPoint payment as well.

11 Q. Okay. And it is your testimony that  
12 he expressly told you not to make that NexPoint  
13 December 31 payment?

14 MR. MORRIS: Objection, asked and  
15 answered twice.

16 A. Yes, he -- he did, during that  
17 conversation.

18 Q. And did you ever follow up with him  
19 after that about whether NexPoint should or  
20 shouldn't make that payment?

21 A. I did not.

22 Q. Did you ever, on or about  
23 December 31, 2020, remind him and say, hey,  
24 this payment is due, what shall I -- what  
25 should I do?

1 WATERHOUSE - 10-19-21

2 A. I did not.

3 Q. So sitting here today, you -- you  
4 remember distinctly that Dondero in December of  
5 2020 expressly told you not to have NexPoint  
6 make that payment?

7 MR. MORRIS: Objection, asked and  
8 answered three times.

9 A. Yes.

10 Q. Can you say categorically it wasn't  
11 just some general discussion where he told you  
12 not to make payments?

13 MR. MORRIS: Objection, asked and  
14 answer four times.

15 MR. HORN: Four times now. Go for  
16 five.

17 A. Yes.

18 Q. Did you tell Mr. Seery that?

19 A. I don't believe I did. I don't  
20 recall.

21 Q. And was this an in-person discussion  
22 or telephone or email? Do you remember?

23 A. This was a phone -- a phone  
24 conversation.

25 Q. Okay. Would you have a record of --

1 WATERHOUSE - 10-19-21

2 on your cell phone of when that conversation  
3 might have taken place?

4 I'm sorry, strike that.

5 Was that by cell phone?

6 A. I believe -- yes, because we -- I  
7 was at home. I mean, I don't have a landline.  
8 All I have is my cell phone.

9 Q. Do you know whether your cell phone  
10 still has records of conversations from  
11 December 2020 on it?

12 A. My call log doesn't go back that  
13 far.

14 Q. Okay. Thank you.

15 MR. RUKAVINA: I will pass the  
16 witness.

17 MS. DEITSCH-PEREZ: Just a couple  
18 quick questions.

19 FURTHER EXAMINATION

20 BY MS. DEITSCH-PEREZ:

21 Q. With respect to HCRE and HCMS, am I  
22 correct there was -- there was no direction not  
23 to pay those loan payments?

24 MR. MORRIS: Objection to the form  
25 of the question.



1 WATERHOUSE - 10-19-21

2 A. Yes, I don't recall having  
3 conversations about, you know, those -- those  
4 entities.

5 Q. And, in fact, what was the tone that  
6 Mr. Dondero had when he talked to you about the  
7 fact that HCRE and HCMS payments hadn't been  
8 made when he found out that they hadn't been  
9 paid?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: Objection to form.

12 Q. What was the tone he took with you?

13 A. Oh, it was -- it was -- it was -- it  
14 was very negative. I mean, I think he cursed  
15 at me and he doesn't usually curse.

16 Q. Okay. And in your mind, is that  
17 consistent with the fact that he was surprised  
18 that those payments hadn't been made?

19 MR. MORRIS: Objection to the form  
20 of the question.

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. MORRIS: I have nothing further.

24 Thank you so much, Mr. Waterhouse.

25 MR. HORN: I have no questions.

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2 Thank you, Mr. Waterhouse. We appreciate  
3 your time. I am logging off the discussion  
4 and I will talk to y'all tomorrow.

5 MR. MORRIS: Super.

6 VIDEOGRAPHER: If there are no  
7 further questions, this ends the  
8 deposition -- excuse me. This ends the  
9 deposition, and we are going off the record  
10 at 7:30 p.m.

11 (Deposition concluded at 7:30 p.m.)  
12

13 \_\_\_\_\_  
14 FRANK WATERHOUSE  
15

16 Subscribed and sworn to before me  
17 this day of 2021.  
18

19 -----  
20  
21  
22  
23  
24  
25

1 WATERHOUSE - 10-19-21

2 C E R T I F I C A T E

3  
4 I, SUSAN S. KLINGER, a certified shorthand  
5 reporter within and for the State of Texas, do  
6 hereby certify:

7 That FRANK WATERHOUSE, the witness whose  
8 deposition is hereinbefore set forth, was duly  
9 sworn by me and that such deposition is a true  
10 record of the testimony given by such witness.

11 I further certify that I am not related to  
12 any of the parties to this action by blood or  
13 marriage; and that I am in no way interested in  
14 the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this 19th of October, 2021.

17   
18

19 Susan S. Klinger, RMR-CRR, CSR

20 Texas CSR# 6531  
21  
22  
23  
24  
25

1 WATERHOUSE - 10-19-21

2 NAME OF CASE: In re: Highland Capital

3 DATE OF DEPOSITION: October 19, 2021

4 NAME OF WITNESS: Frank Waterhouse

5 Reason Codes:

6 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

10 From\_\_\_\_\_to\_\_\_\_\_

11 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

12 From\_\_\_\_\_to\_\_\_\_\_

13 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

14 From\_\_\_\_\_to\_\_\_\_\_

15 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

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17 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

18 From\_\_\_\_\_to\_\_\_\_\_

19 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

20 From\_\_\_\_\_to\_\_\_\_\_

21 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

22 From\_\_\_\_\_to\_\_\_\_\_

23 Page\_\_\_\_Line\_\_\_\_Reason\_\_\_\_\_

24 From\_\_\_\_\_to\_\_\_\_\_

25



Kristin Hendrix - October 27, 2021

APPEARANCES

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STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777, Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney at Law, appeared via videoconference as counsel on behalf of the Defendants Jim Dondero, HCMS and HCRE Partners.

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Kristin Hendrix - October 27, 2021

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| 14 | Exhibit 3                           | Email from David Klos, May 2, 2019, | 31          |
| 15 |                                     | HCMLP to HCMFA loan                 |             |
| 16 |                                     |                                     |             |
| 17 | Exhibit 4                           | Promissory Note, 5M, May 3          | 42          |
| 18 |                                     |                                     |             |
| 19 | Exhibit 5                           | Promissory Note, 2.4M, May 2        | 42          |
| 20 |                                     |                                     |             |
| 21 | Exhibit 6                           | Promissory Note, 5M, May 3          | 43          |
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| 23 | Exhibit 7                           | Promissory Note, 2.4M, May 2        | 43          |
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| 25 | Exhibit 8                           | Info, HCMF loan 05.03.2019          | 56          |

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| 1  | <b>Exhibit 9</b>  | <b>Info, HCMF loan 05.02.2019</b>          | <b>56</b> |
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| 4  |                   | <b>2020, HCM - HCMFA financial</b>         |           |
| 5  |                   | <b>statements</b>                          |           |
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| 7  | <b>Exhibit 11</b> | <b>Email from John Morris to</b>           | <b>62</b> |
| 8  |                   | <b>James Seery, Jan 6, 2021,</b>           |           |
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| 12 |                   | <b>Promissory Notes</b>                    |           |
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| 22 |                   | <b>Lauren Thedford, Oct 6, 2020, 15(c)</b> |           |
| 23 |                   | <b>follow-up</b>                           |           |
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1 **Exhibit 17** Email from James Seery to 88  
2 James Dondero, Jan 7, 2021, demand  
3 on promissory note  
4

5 **Exhibit 18** Email from Kristin Hendrix, Jan 12, 90  
6 2021, NexPoint Note to HCMLP  
7  
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1 KRISTIN HENDRIX,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 Q. (BY MR. RUKAVINA) Good morning. If you'll  
5 state your name.

6 A. Kristin Hendrix.

7 Q. We're doing this both ways. You're on the  
8 Zoom remotely and they can see you, but I would ask  
9 that you and I maintain eye contact. Of course, if  
10 someone is asking you on the Zoom, then maintain  
11 contact with them, if that's okay with you.

12 A. Sure.

13 Q. Have you been deposed before?

14 A. No.

15 Q. So I'm sure your counsel explained to you,  
16 but very quickly, you understand that you're testifying  
17 under oath and penalty of perjury as though you were in  
18 a court of law?

19 A. Yes.

20 Q. And you understand my job is to ask clear  
21 questions that you understand?

22 A. Yes.

23 Q. And if for whatever reason you don't  
24 understand my questions, please let me know or ask me  
25 to rephrase; otherwise, I'm going to assume that you

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1 understood my question; okay?

2 A. Yeah.

3 MR. MORRIS: Objection.

4 Q. (BY MR. RUKAVINA) Sometimes Counsel will  
5 make objections. Unless he instructs you not to  
6 answer, you're still required to answer my questions.

7 A. Okay.

8 Q. Now, in preparation for this deposition, did  
9 you read the deposition transcript or any part of it of  
10 Frank Waterhouse?

11 A. I did not.

12 Q. Did anyone provide you a synopsis or summary  
13 of it?

14 A. Maybe a few bits and pieces, but...

15 MR. RUKAVINA: Off the record for a second.  
16 (Off the record.)

17 Q. (BY MR. RUKAVINA) What do you mean bits and  
18 pieces?

19 A. I don't recall anything specific that was  
20 said, other than it was very long.

21 Q. Did you talk to Frank Waterhouse about it?

22 A. Did not.

23 Q. Other than Highland's legal counsel, did you  
24 talk to anyone else about -- or -- strike that.

25 Other than Highland's legal counsel, did you

Kristin Hendrix - October 27, 2021

1 talk to anyone about Frank Waterhouse's deposition from  
2 last week?

3 A. I did not.

4 Q. Did you review -- strike that.

5 Did you see any of the video of

6 Mr. Waterhouse's deposition?

7 A. Nope.

8 Q. Same questions now for Mr. Seery, S-e-e-r-y.

9 Did you read any portion or the whole of

10 Mr. Seery's deposition from last week?

11 A. I did not.

12 Q. See any of the video?

13 A. No.

14 Q. Did you see any synopsis or summary of his  
15 deposition?

16 A. No.

17 Q. Did you talk to him about his deposition?

18 A. I did not.

19 Q. Other than talking to Highland's counsel, did  
20 you talk to anyone about Mr. Seery's deposition?

21 A. No.

22 Q. Other than talking to Highland's counsel, did  
23 you talk to anyone about your deposition today?

24 A. Just John Morris and Dave Klos.

25 Q. When did you talk to Mr. Klos, K-l-o-s?

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1 A. First time about this was last Friday. And  
2 then again Monday this week. And yesterday. And this  
3 morning.

4 Q. Friday was there any lawyer present during  
5 your discussion with Mr. Klos?

6 A. Yes, every time Mr. Morris was present.

7 MR. RUKAVINA: Is it your position that those  
8 four discussions would be privileged, Counsel?

9 MR. MORRIS: Yes.

10 MR. RUKAVINA: Then we'll move on.

11 Q. (BY MR. RUKAVINA) So we've established the  
12 four times you talked to Mr. Klos with counsel present.  
13 Did you do anything else related to or in preparation  
14 for today's deposition?

15 A. Yes, probably went through and reviewed some  
16 emails, documentation that I may have had that I need  
17 to refresh memory on.

18 Q. These documents and emails that you might  
19 have reviewed, did you supplementally provide them to  
20 counsel or anyone else?

21 A. Yes.

22 Q. This would have been in the last week or  
23 10 days?

24 A. Yes.

25 Q. Prior to the last week or 10 days, are you

Kristin Hendrix - October 27, 2021

1 aware that my office served requests for production on  
2 Highland?

3 A. Yes.

4 Q. And did you do anything prior to the last  
5 week or 10 days to try to search both your personal  
6 records and corporate records for any responsive  
7 documents?

8 A. Not that I recall.

9 Q. Is that something that you understand legal  
10 counsel was charged with?

11 A. Yes.

12 Q. Let's go briefly now about your background,  
13 please.

14 Where do you live?

15 A. I live in Denton, Texas.

16 Q. And what is your date of birth, please?

17 A. January 26, 1982.

18 Q. And walk me through your educational  
19 background, starting with any postsecondary, if any,  
20 schooling or college or anything like that.

21 A. Sure. Graduated in 2004 from the University  
22 of North Texas with a degree in finance. Went on to  
23 get my MBA from SMU in 2009. And then went further and  
24 got my CPA license I believe in 2015.

25 Q. In the state of Texas?

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1 A. Yes.

2 Q. And has your CPA license been current since  
3 then?

4 A. Sure has.

5 Q. Have you faced any kind of disciplinary  
6 action as a CPA?

7 A. I have not.

8 Q. Now, please walk me through your work  
9 history. Let's say starting with after you graduated  
10 college.

11 A. Sure. December of 2005, which was shortly --  
12 sorry, 2004, shortly after I graduated from  
13 North Texas, I started at Highland. It was my first  
14 real job out of college. I have been there ever since,  
15 almost 17 years now.

16 Have worked in the corporate accounting  
17 department the entire time. Started off as the AP  
18 associate, and worked my way up over the years and  
19 currently am the controller.

20 Q. So even when you were getting your MBA and  
21 CPA you were employed by Highland?

22 A. Yes.

23 Q. Impressive. You're the controller today you  
24 mentioned?

25 A. Yes.

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1 Q. That's -- when did you become the controller,  
2 sometime February or March of this year?

3 A. Yes.

4 Q. Before you became the controller, what was  
5 your role at Highland?

6 A. Right before that I was assistant controller.  
7 That was I believe April of 2020. Before that, the  
8 senior accounting manager, and I held that position for  
9 years.

10 Q. So in May of 2019 would you have been the  
11 senior -- you said senior account?

12 A. Senior accounting manager I believe was my  
13 title.

14 Q. And would that have been your title in May of  
15 2017?

16 A. Yes, I believe so.

17 Q. And let's focus now on May 2019 as the senior  
18 accounting manager. How would you describe your role  
19 at Highland in May of 2019? What were your duties?

20 A. Sure. I helped with treasury management  
21 function, cash forecasts and things like that. And  
22 oversaw the financial reporting from the last batch of  
23 AP to all the way to financials and reporting on  
24 audits.

25 Q. Who did you report to in May of 2019?



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1 A. David Klos.

2 Q. What was Mr. Klos' title to your  
3 understanding back then?

4 A. I believe he was the controller.

5 Q. And do you have an understanding as to who  
6 Mr. Klos reported to back then?

7 A. Yes, Frank Waterhouse.

8 Q. Frank Waterhouse. Who was he in May of 2019?

9 A. The CFO.

10 Q. Is Mr. Klos still with Highland today?

11 A. He is.

12 Q. What is his role now?

13 A. He's now CFO.

14 Q. You mentioned treasury management as of 2019,  
15 May. What do you mean by treasury management? What is  
16 that?

17 A. Generally speaking, we -- it's not just me as  
18 one person. We have checks and balances.

19 My team would be in charge of sending out  
20 payments, reconciling bank statements, making sure  
21 money is in the right accounts, creating cash forecasts  
22 and reporting on those every week with the CFO and  
23 oftentimes the CEO.

24 Generally that's everything that fell under  
25 the umbrella.

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1 Q. And would your description of treasury  
2 management be the same for the December 2020 period?

3 A. Yes.

4 Q. Who at Highland or which group at Highland in  
5 December of 2020 would have been responsible for noting  
6 that there are certain bills that need to be paid in  
7 the near or subsequent future.

8 By way of, let's say, accounts payable or  
9 promissory notes or taxes or anything like that?

10 A. Can you repeat your question.

11 Q. Sure. So obviously, Highland was a pretty  
12 sophisticated business; correct?

13 A. Yeah.

14 MR. MORRIS: Objection to the form.

15 Q. (BY MR. RUKAVINA) And had various accounts  
16 payable; right?

17 A. Yes.

18 Q. And it had maybe, let's just say, certain  
19 note obligations that it had to pay from time to time;  
20 correct?

21 MR. MORRIS: Objection to the form of the  
22 question. Do you mean Highland Capital?

23 MR. RUKAVINA: I mean Highland Capital  
24 Management; correct, I'm sorry. The debtor.

25 Q. (BY MR. RUKAVINA) Can we say the debtor?

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1 A. Yes, you can say the debtor.

2 Q. So when I say the debtor and you say the  
3 debtor we understand each other to mean Highland  
4 Capital Management, comma, LP; correct?

5 A. Correct.

6 Q. I apologize. In the December 2020 period, I  
7 would imagine that the debtor had its own -- that  
8 was -- strike that.

9 We'll cut to the chase.

10 In December of 2020, the debtor was providing  
11 services to various other entities affiliated with  
12 Mr. Dondero; correct?

13 A. Correct.

14 Q. That would have included NexPoint Advisors,  
15 LP?

16 A. Correct.

17 Q. And you're aware that NexPoint Advisors was  
18 the obligor on at least one promissory note to the  
19 debtor; correct?

20 A. Correct.

21 Q. And did the debtor in December 2020 provide  
22 so-called treasury management services to NexPoint  
23 Advisors?

24 MR. MORRIS: Objection to the form of the  
25 question.

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1 THE WITNESS: Yes.

2 Q. (BY MR. RUKAVINA) As part of that, in  
3 December 2020, would it have been employees of the  
4 debtor that would have scheduled for potential payment,  
5 subject to approval by NexPoint, NexPoint's future  
6 obligations as they were coming due?

7 A. Yes, we would have scheduled, only with  
8 approval.

9 Q. And would that have included NexPoint's  
10 obligations on the promissory note to Highland?

11 A. Yes.

12 Q. Back to your background briefly.

13 Do you have any legal training at all?

14 A. I do not.

15 Q. Do you have any courses, have you taken any  
16 courses in drafting promissory notes?

17 A. No.

18 Q. Do you believe that your expertise as a  
19 certified public accountant gives you any greater  
20 qualification than anyone else to prepare a promissory  
21 note?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: No.

25 Q. (BY MR. RUKAVINA) Have you ever prepared or

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1 drafted a promissory note?

2 A. That term is probably used loosely. I have  
3 not completely drafted a promissory note from scratch,  
4 no.

5 Q. And we'll go into the details. Fair to say  
6 that you have taken a form promissory note and revised  
7 it?

8 A. Absolutely.

9 Q. Was this part of your job in May of 2019 at  
10 Highland?

11 A. Yes.

12 Q. Going back to the May 2019 time frame, were  
13 you part of a particular group at Highland, like  
14 accounting or legal or compliance?

15 A. Yes, corporate accounting.

16 Q. Corporate accounting. That's what you  
17 described before about treasury management and  
18 projections and forecasts?

19 A. Yes.

20 Q. In May of 2019, was it the practice at  
21 Highland that corporate accounting would be responsible  
22 for drafting intercompany promissory notes?

23 A. Not necessarily drafting, but updating a  
24 draft that had been previously produced and provided by  
25 our legal team, yes.

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1 Q. And Highland in May -- the debtor in May of  
2 2019 did have a legal department?

3 A. Yes.

4 Q. Kind of like the corporate accounting, there  
5 was a separate legal department; correct?

6 A. Correct.

7 Q. And who would have been in charge of that  
8 department in May of 2019?

9 A. Scott Ellington, E-l-l-i-n-g-t-o-n.

10 Q. In May of 2019 or by May of 2019 was there  
11 any practice at Highland as to whether its legal  
12 department would be involved with the drafting or  
13 execution of any intercompany promissory notes?

14 MR. MORRIS: Objection to the form of the  
15 question.

16 THE WITNESS: It depends on the note.

17 Q. (BY MR. RUKAVINA) What did it depend on?

18 A. Our typical practice is if we have a loan  
19 with certain affiliates that it's a demand note. We  
20 have a template that we have used for years that was  
21 created by either our internal legal team or an outside  
22 law firm, I'm not sure which.

23 The typical practice is always updating a few  
24 things on that template, getting it executed, and  
25 filing it in our audit folders.

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1 Q. By updating, what do you mean?

2 A. There's a few things that would need  
3 updating, the date.

4 Q. Maker?

5 A. Maker.

6 Q. Amount?

7 A. The dollar amount, the interest rate.

8 Q. And is it your testimony that the corporate  
9 accounting group would do these things on its own  
10 without necessarily the involvement of the legal group?

11 MR. MORRIS: Objection to the form of the  
12 question.

13 THE WITNESS: Generally, yes.

14 Q. (BY MR. RUKAVINA) Do you have any memory in  
15 or before May of 2019 if the corporate -- I'm sorry, if  
16 the legal group became involved in drafting or  
17 executing any prior intercompany promissory notes?

18 A. Yes.

19 Q. Explain to me what you remember about that.

20 A. I do know that they were involved with  
21 drafting restructured notes. So taking demand notes  
22 and turning them into a 30-year amort note.

23 That was in 2017. I know for sure that they  
24 were involved in that because it was something  
25 different. We weren't just updating a demand note.

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1 Q. Is it your testimony that to the best of your  
2 recollection by May of 2019 and in May of 2019 it would  
3 have been the corporate accounting group that would  
4 have handled routine intercompany demand notes?

5 A. Yes.

6 Q. And you can think of more than one instance  
7 on which that happened?

8 A. Yes.

9 Q. And this is not a memory test, but going back  
10 in time can you try to give an estimate of what year  
11 that first started happening, that the corporate  
12 accounting would handle the drafting or execution of  
13 intercompany demand notes?

14 A. As far as I can remember.

15 Q. Is it your testimony that as -- maybe even  
16 going back as far as 2005 there were intercompany  
17 demand notes?

18 A. Yes.

19 Q. I don't know how to ask this question, but  
20 was this a significant thing in corporate accounting or  
21 just another routine deal when you handled demand  
22 notes?

23 MR. MORRIS: Objection to the form of the  
24 question.

25 THE WITNESS: This is a routine job duty that



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1 we routinely did.

2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do  
3 you remember any maker on these intercompany demand  
4 notes actually being required to pay a demand note, in  
5 other words, Highland making demand?

6 A. Not that I can specifically recall.

7 Q. Do you have any recollection as to what  
8 happened to these intercompany demand notes over the  
9 years between 2005 and 2019?

10 A. Yeah. Typically anytime specifically Jim  
11 Dondero would need to move money between related  
12 parties, he would pay down -- when I say him, he would  
13 have us in corporate accounting move money around, pay  
14 off notes, reissue new notes somewhere else.

15 So a way to move money around between his  
16 entities.

17 Q. So let's use just hypotheticals here so that  
18 I'm not trying to pin you down to any specific fact.

19 But between 2005 and 2019, is it fair to say  
20 that if some Dondero entity that's not the debtor  
21 needed money and the debtor had money, then Dondero  
22 would have the debtor lend money to that entity on a  
23 demand note basis?

24 A. So long as they have the cash available to do  
25 so.

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1 Q. "They" being the debtor?

2 A. Debtor, yes.

3 Q. And is it fair to say, then, again  
4 hypothetically without any specifics, that if the  
5 debtor maybe from time to time needed money and one of  
6 these other entities had cash, then Dondero would cause  
7 that other entity to pay down the demand note?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: Can you repeat that.

11 Q. (BY MR. RUKAVINA) Sure. So I think you  
12 mentioned that from time to time these entities would  
13 pay down these demand notes?

14 A. To the debtor?

15 Q. To the debtor.

16 A. Yes.

17 Q. And is that, hypothetically again, is that  
18 because on occasion the debtor might have needed cash  
19 and these entities had the cash, so Dondero would have  
20 them pay back the note?

21 MR. MORRIS: Objection to the form of the  
22 question.

23 THE WITNESS: Yes, that could be a reason.

24 Q. (BY MR. RUKAVINA) Can you think of any other  
25 reason in those 14 years?

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1           A.     If the debtor needed cash to lend to another  
2 entity.

3           Q.     I see. So again, it's all one big happy  
4 family, and whoever needed cash, the cash moved around;  
5 correct?

6           A.     Correct.

7           Q.     Was it Mr. Dondero that basically was the  
8 only deciding person in each instance that you're aware  
9 of in those 14 years as to when a note would be made or  
10 repaid?

11          A.     I can't answer specifically to that. Most of  
12 my direction came from our CFO at the time,  
13 Frank Waterhouse. So what conversations he would have  
14 with Jim Dondero, I can't answer to that. But I would  
15 suspect so, yes.

16          Q.     And in May of 2019 or by May of 2019, did you  
17 communicate personally, by email or telephone, in  
18 person, periodically with Jim Dondero?

19          A.     I can't say periodically, no.

20          Q.     Well, I'm not trying to put words in your  
21 mouth. Is it fair to say that you kind of -- your  
22 communications stopped with Mr. Waterhouse and  
23 Waterhouse communicated with Dondero, as opposed to you  
24 regularly communicating with Dondero?

25          A.     That's typical, yes.

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1 Q. Can you think of any instances in which  
2 Mr. Dondero gave you any instructions or you came to  
3 him seeking any instructions, without some intermediary  
4 between the two of you?

5 A. No, usually Frank was present.

6 Q. Would you categorize Mr. Waterhouse as kind  
7 of guarding with jealousy his access to Mr. Dondero?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: No.

11 Q. (BY MR. RUKAVINA) What kind of boss was he  
12 in May of 2019? Was he laid back, or was he a jerk?  
13 Was he demanding? How would you characterize him in  
14 May of 2019?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I would say he was a good boss.

18 Q. (BY MR. RUKAVINA) You think he was competent  
19 as far as his job went?

20 A. Yes, very competent.

21 Q. Do you think he was competent as far as his  
22 job went in December of 2020?

23 A. Yes.

24 Q. January 2021?

25 A. Yes.

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1 Q. Was he patient and understanding as a boss?

2 A. Yes.

3 Q. Okay. Was he ever condescending or rude to  
4 anyone in your presence?

5 A. No.

6 Q. So you're the controller today at Highland,  
7 the debtor, the reorganized debtor; right?

8 A. Yes.

9 Q. And who do you report to? You mentioned  
10 Mr. Klos is the CFO?

11 A. Yes.

12 Q. And do you also report to Mr. Seery?

13 A. Yes, I think everybody does.

14 Q. And I don't need to know details, but I take  
15 it you're on a salary from reorganized Highland?

16 A. Yes.

17 Q. Is any part of your compensation merit or  
18 bonus based?

19 A. It could potentially be.

20 Q. Have you had any discussions with Mr. Seery  
21 or Mr. Klos about some sort of bonus compensation?

22 A. Yes.

23 Q. Has anything been agreed to?

24 A. Yes.

25 Q. And again, I don't need to know the exact

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1 numbers. What would your bonus compensation consist  
2 of? How would it be decided?

3 A. It's actually -- was decided when I agreed to  
4 stay on the Highland team back in February 2021, so  
5 it's in my employment agreement.

6 Q. So what's your bonus compensation?

7 A. I'm not sure I understand what you're asking.

8 Q. So is the bonus discretionary on the part of  
9 Highland?

10 A. No, it's a set amount.

11 Q. And what triggers it or governs the set  
12 amount?

13 A. Just it gets paid out on a certain date of  
14 the year. It's very straightforward, set out in my  
15 employment agreement.

16 Q. Is it irrespective of the performance of the  
17 reorganized debtor?

18 A. Yes.

19 Q. So why do you call it a bonus instead of base  
20 compensation?

21 A. That's what it's called in my agreement.

22 Q. So your base compensation and your bonus,  
23 it's your testimony, you're going to earn it  
24 irrespective of whether reorganized Highland does good  
25 or bad with respect to its profitability?

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1 A. Correct.

2 Q. And how Highland, reorganized Highland  
3 collects these promissory notes is going to play no  
4 part in your base and bonus compensation to your  
5 understanding; is that correct?

6 A. To my knowledge, yes.

7 Q. So you have no direct or indirect stake in  
8 the outcome of these litigations?

9 A. No.

10 Q. And you understand that I represent HCMFA and  
11 NexPoint?

12 A. Yes.

13 Q. And these court reporters are not familiar  
14 with some of our terminology. NAP [verbatim], if we  
15 say that, that means NexPoint; right?

16 A. Uh-huh.

17 Q. You have to say yes or no.

18 A. Yes, NPA, NexPoint.

19 Q. NPA. And when we say NexPoint, you and I are  
20 meaning NexPoint Advisors, LP; right?

21 A. Yes.

22 Q. And when we say HCMFA, we're meaning Highland  
23 Capital Management Fund Advisors, LP, yes?

24 A. Yes.

25 Q. What is your understanding of the two

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1 lawsuits, the one against HCMFA and the one against  
2 NexPoint, that you're being deposed on today?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 Q. (BY MR. RUKAVINA) Who is suing who and for  
6 what?

7 A. I don't know all the details.

8 Q. So we've established that you've discussed  
9 these lawsuits in the last week or a little bit more  
10 with legal counsel. I don't want to talk about that.

11 Prior to these recent discussions, did you  
12 have any discussions with anyone at Highland about its  
13 lawsuits against HCMFA and NexPoint on promissory  
14 notes?

15 A. Repeat that again.

16 Q. Sure. So remember we're excluding the recent  
17 discussions in the last week or 10 days with counsel;  
18 right?

19 A. Okay.

20 Q. Are you aware that in January of 2021 the  
21 debtor sued NexPoint to collect on a promissory note?

22 A. I'm aware that demand notices were sent.

23 Q. So until recently you weren't aware that a  
24 lawsuit had been filed?

25 A. There's a lot of lawsuits filed. I can't



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1 keep track of what is what or what we're talking about  
2 at certain times.

3 Q. But you have no distinct memory of that?

4 A. Correct.

5 Q. And same question for the lawsuit that the  
6 debtor filed against HCMFA in January.

7 Do you have any specific memory of that  
8 lawsuit having been filed?

9 A. Not specifically.

10 Q. You mentioned that you're aware that on or  
11 before January 2021, demand letters had been sent?

12 A. Yes.

13 Q. Did you play any role in either drafting  
14 those demand letters or the decision to send them?

15 A. No.

16 Q. So going back to my question about these  
17 lawsuits, do you have any memory of anyone asking  
18 you -- again, excluding the last week or two.

19 Do you have any memory of anyone asking you  
20 to do anything with respect to either or both of these  
21 lawsuits?

22 A. No.

23 Q. You have no memory of Mr. Waterhouse,  
24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any  
25 background information or your input at all on these

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1 two lawsuits?

2 MR. MORRIS: Better not have been --

3 THE WITNESS: No.

4 Q. (BY MR. RUKAVINA) Who did I say? Did I  
5 misspeak? Okay.

6 Now we're going to have some exhibits here.

7 And do you have the labels?

8 Let's take a minute break off the record.

9 (Off the record.)

10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to  
11 provide to you a promissory note in the original  
12 principal amount of \$5 million from HCMFA. This is the  
13 PDF version of this as filed with the Court for  
14 collection. It's going to be Exhibit 1.

15 (Whereupon, Exhibit 1 was marked for  
16 identification.)

17 Q. (BY MR. RUKAVINA) Before you look at  
18 Exhibit 1, I'm going to do the same thing for  
19 Exhibit 2, which is a promissory note from HCMFA for  
20 \$2.4 million, dated May 2, 2019.

21 (Whereupon, Exhibit 2 was marked for  
22 identification.)

23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these  
24 are the PDF versions of these notes as filed with the  
25 Court. Sitting here today, do you remember anything

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1 about either or both of these two promissory notes?

2 A. Sure, yes.

3 Q. What do you remember?

4 A. I remember seeing them because I've recently  
5 looked at them. I see them all the time in our loan  
6 tracking spreadsheets. My team would have been  
7 responsible for the whole process that I explained  
8 before when it comes to a promissory note.

9 Q. And --

10 MR. MORRIS: Are you finished?

11 THE WITNESS: Yes.

12 Q. (BY MR. RUKAVINA) And we have an email here  
13 that might give some more context to that if I can find  
14 it here.

15 This will be Exhibit 3. This is an email  
16 from David Klos to corporate accounting dated May 2,  
17 2019.

18 (Whereupon, Exhibit 3 was marked for  
19 identification.)

20 Q. (BY MR. RUKAVINA) Do you see this email,  
21 ma'am?

22 A. Yes.

23 Q. Okay. Corporate accounting, would that email  
24 group have included you?

25 A. Yes.

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1 Q. And this email says, Kristin, can you or  
2 Hayley. Do you think that Kristin was you?

3 A. I do.

4 Q. Do you remember receiving this email?

5 A. Not explicitly.

6 Q. So it says Blair. Who would Blair be?

7 A. Blair was our AP associate.

8 Q. What is her last name?

9 A. At this time it would have been Roeber,  
10 R-o-e-b-e-r.

11 Q. Okay. And did it subsequently change?

12 A. Yes, it's now Hillis, H-i-l-l-i-s.

13 Q. Please send \$2.4 million from HCMLP to HCMFA.  
14 This is a new interco loan. Kristin, can you or Hayley  
15 please prep a note for execution. I'll have further  
16 instructions later today, but please process this  
17 payment as soon as possible.

18 Did I read that correctly?

19 A. Yes.

20 Q. Do you have any memory of whether this email  
21 relates to Exhibit 2, the \$2.4 million promissory note?

22 A. It seems like it does, same date, same  
23 amount.

24 Q. Do you have any memory, or in reviewing your  
25 files did you see any similar email or document that

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1 would have related to Exhibit 1, the \$5 million  
2 promissory note?

3 A. Yes. I believe there's another email for  
4 that one.

5 Q. And do you believe that you provided that to  
6 counsel?

7 A. Yes.

8 Q. Recently or some time ago?

9 A. Well, I don't think I provided it, so I'm not  
10 sure when they got it. I know it has been provided.

11 Q. You know that it has?

12 A. Uh-huh.

13 Q. How do you know?

14 A. Because I've seen it.

15 Q. In the production that was produced to me?

16 A. Yes.

17 Q. And also from a David Klos?

18 A. This one, or on the -- when I say this one,  
19 on the \$2.4 million or the 5-?

20 Q. On the \$5 million note.

21 A. I'm not sure.

22 Q. Okay. Let me make sure I understand you  
23 correctly.

24 Sitting here today you believe that there is  
25 another email referencing the \$5 million loan that has

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1 been produced to my office?

2 A. Yes. I believe so.

3 Q. Okay. And going off memory, did it kind of  
4 say the same thing as this Exhibit 3 except that it  
5 referenced \$5 million?

6 MR. MORRIS: Objection to the form of the  
7 question.

8 THE WITNESS: Generally, should have said the  
9 similar situation, yeah.

10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is  
11 a new interco loan, for Exhibit 3. Other than what he  
12 told you, that this is an intercompany loan, did anyone  
13 else tell you or did you have any other information on  
14 May 2, 2019 that this was a loan?

15 A. I don't specifically recall these  
16 conversations, but I can tell you our normal practice  
17 would be we would either likely be in a cash meeting --  
18 and I say "we." Would have been myself, Dave Klos,  
19 Frank Waterhouse, potentially even Jim Dondero.

20 But I don't recall conversations on this  
21 specific date. But general practice is we would talk  
22 about it.

23 Oftentimes, Frank would either call Dave or I  
24 or stop by and tell us that, we need to send money to  
25 an affiliate, paper up a new loan, let's get a wire out

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1 the door, is typically how this works.

2 Q. Is the answer generally the same for the  
3 \$5 million note?

4 A. Yes.

5 Q. So is it fair to say that typically,  
6 obviously not every time, but typically your corporate  
7 accounting group when it would see intercompany  
8 transfers in large amounts would believe that they were  
9 loans?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: Typically they were loans.  
13 There's not really another way to get money from one  
14 entity to another. And if they were papered as a loan,  
15 that means we were told to set it up that way.

16 Q. (BY MR. RUKAVINA) What do you mean papered  
17 as a loan? Aren't you papering it as a loan when  
18 someone makes the promissory note?

19 A. Yes, because we're told by somebody to do  
20 that.

21 Q. And in this instance, Mr. Klos on Exhibit 3  
22 told the group that this was a loan; right?

23 A. Correct. But he would have spoken with  
24 Frank Waterhouse or Jim Dondero prior to that, before  
25 telling anybody to do that.

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1 Q. Okay. And do you have any knowledge that he  
2 did speak to Mr. Waterhouse or Mr. Dondero before  
3 sending this email?

4 A. Again, I don't have specific knowledge on the  
5 exact conversations, but that's always how it has  
6 worked.

7 Q. That's how it was for 14 or 15 years;  
8 correct?

9 A. Yes.

10 Q. But you're logically assuming that it  
11 happened here. You don't know that it happened here;  
12 correct?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: I would have to be fairly  
16 certain that it did, even though I can't recall  
17 specific conversations.

18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about  
19 who told him that this is a new intercompany loan on  
20 Exhibit 3?

21 A. No. It's quite possible I was involved in  
22 the conversation. I reported to him. I wouldn't  
23 question his authority.

24 Q. Did you ask Mr. Klos who told him that the  
25 \$5 million deal was also an intercompany loan?



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1           A.    I did not ask that specific question that I  
2 can recall.

3           Q.    Did you ask Mr. Waterhouse whether either of  
4 these transactions were loans?

5           A.    I'm sure Mr. Waterhouse is the one that told  
6 us they were loans. We wouldn't just paper up a loan,  
7 send money out and call it a loan and account for it  
8 that way, unless somebody specifically told us.

9           Q.    Do you have any memory of Mr. Waterhouse  
10 orally or in writing or email or in any way, shape, or  
11 form on or about May 2 or 3, 2019 telling you that the  
12 2.4 million or \$5 million transfers were intercompany  
13 loans?

14          A.    No specific knowledge of exact conversations,  
15 but I'm certain that those conversations were had  
16 because that's the only way that we would have papered  
17 up a loan, sent money out as a loan, had them on our  
18 financials for two years.

19          Q.    So you're saying that this email, Exhibit 3,  
20 from Mr. Klos was not enough, that there would have  
21 been other things that happened to make you and other  
22 people in your group confident that these were loans?

23          A.    Yes.

24          Q.    And these other things would have been in  
25 person or by email?

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1 A. Most likely in person via phone call.

2 Q. Okay. So again, you have no specific memory  
3 of it, but based on the 14-year pattern and conduct you  
4 believe that you would have discussed these two  
5 transfers with Mr. Waterhouse and he would have told  
6 you these are loans?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 THE WITNESS: Correct.

10 Q. (BY MR. RUKAVINA) And then would he have  
11 told you to take care of the promissory notes, or was  
12 that Mr. Klos here in Exhibit 3?

13 A. It could have been both. It's clearly Dave  
14 in this email, but Frank could have also said that to  
15 me.

16 Q. Now, do you -- strike that.

17 In May of 2019, did you know or were you told  
18 why these \$7.4 million were being transferred from the  
19 debtor to HCMFA?

20 A. Yes. I do have recollection that -- I do  
21 know that there were two big events in May 2019.  
22 2.4 million was related to a TerreStar NAV error, with  
23 one of the funds advised by HCMFA. That's Global  
24 Allocation Fund.

25 Similar with the \$5 million loan. There was

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1 a consent fee that the advisor of the Global Allocation  
2 Fund had promised to pay to shareholders of that fund,  
3 and it was in the amount of \$5 million roughly.

4 So both of these loans were for those  
5 purposes respectfully.

6 Q. And were you in May of 2019 also aware that  
7 in addition to the \$2.4 million, there was another more  
8 than \$5 million paid to that fund by HCMFA's insurer as  
9 compensation for the NAV error?

10 A. By the insurance company, yes.

11 Q. So the \$7.4 million, you understood then was  
12 a loan as opposed to compensation to HCMFA?

13 A. Yes.

14 Q. Okay. Did you understand in May of 2019 that  
15 it had been the debtor and its valuation team that  
16 caused that NAV error?

17 MR. MORRIS: Objection to the form of the  
18 question.

19 THE WITNESS: I can't answer that. I was not  
20 involved with the activities leading up to the NAV  
21 error.

22 Q. (BY MR. RUKAVINA) How do you know that the  
23 \$7.4 million were being transferred for the NAV error  
24 and consent fee?

25 A. Because I do know about both of those

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1 instances and I do know that HCMFA needed to pay these  
2 dollar amounts for both of those.

3 Q. And you knew that in May of 2019?

4 A. Yes.

5 Q. How did you know that in May of 2019?

6 A. It was lots of discussions had been going on  
7 around both of these issues for months. These weren't  
8 surprises to anybody.

9 Q. So although you weren't involved directly  
10 with the NAV error issues, it was more or less common  
11 knowledge in your accounting group?

12 A. Correct.

13 Q. Do you have any knowledge at all as to  
14 whether Mr. Dondero decided to transfer these  
15 \$7.4 million not as a loan, but to compensate HCMFA for  
16 the debtor's alleged liability?

17 A. Have not heard of that.

18 Q. Ever?

19 A. Never.

20 Q. But you also never heard Mr. Dondero say that  
21 these \$7.4 million were a loan; correct?

22 A. That was not told to me directly.

23 Q. Again, you're logically assuming that based  
24 on many instances of intercompany transfers in the  
25 14 years prior to that?

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1 MR. MORRIS: Objection to the form of the  
2 question. Mischaracterizes the testimony.

3 THE WITNESS: Correct.

4 Q. (BY MR. RUKAVINA) I think you answered  
5 correct?

6 A. Correct.

7 Q. And you mentioned that after these notes, you  
8 saw them on internal financials and that reinforces  
9 your view that these were loans?

10 A. Correct.

11 Q. But as of May 2 and 3, 2019, no one had told  
12 you directly that these are loans?

13 MR. MORRIS: Objection to the form of the  
14 question. It's in writing.

15 THE WITNESS: That's not what I'm saying at  
16 all.

17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email  
18 or emails, no one told you on May 2 or May 3, 2019 that  
19 you remember today that these were loans?

20 A. It quite possibly could have been told to me  
21 in addition to this email.

22 Q. I understand. You just have no memory of  
23 that today; correct?

24 A. Correct.

25 Q. Is there anything that you can think of

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1 sitting here today to refresh your memory on that  
2 point?

3 A. I do not think so. I'm sure there was  
4 conversation that unfortunately would not be in an  
5 email.

6 Q. Now, we have the Word documents, the Word  
7 version of these two promissory notes, and you're going  
8 to have rely on me that I printed these out as  
9 Mr. Morris sent to me. If I'm misleading you on that,  
10 then I'm in trouble and your answers don't count.

11 So please assume that I didn't doctor these  
12 and that I printed them out as they were prepared to  
13 me; okay?

14 A. Yes.

15 Q. So Exhibit 4 will be the \$5 million note and  
16 Exhibit 5 will be the 2.4 million.

17 (Whereupon, Exhibits 4 & 5 were marked for  
18 identification.)

19 Q. (BY MR. RUKAVINA) Before I ask about 4 and  
20 5, to be fair to you and refresh your memory, I'm going  
21 to provide you printouts of the metadata, metadata --  
22 I'm not sure how to better say that -- for both notes.

23 And again I'm representing to you that I  
24 printed out the metadata without doctoring it, so  
25 please assume that's true, and if it's not, your

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1 answers don't count and I'm in trouble.

2 6 will be the \$5 million note, and 7 will be  
3 the \$2.4 million note.

4 (Whereupon, Exhibits 6 & 7 were marked for  
5 identification.)

6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5  
7 are the Word documents. Do you have any memory of you  
8 doing anything with respect to these two Word  
9 documents?

10 A. I don't have specific memory, but generally  
11 speaking, it was my job to update promissory note  
12 templates and create promissory notes.

13 Q. So do you believe that -- we discussed  
14 earlier that your group would have used a template and  
15 that it would have made changes reflecting the maker,  
16 amount, date, interest rate.

17 Do you believe you were the one with respect  
18 to 4 and 5 that updated that template to create 4  
19 and 5?

20 A. I'm sure that I was, yes.

21 Q. Well, Exhibit 6 -- do you know what metadata  
22 is?

23 A. Sort of.

24 Q. What's your understanding of what metadata  
25 is?

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1 A. Just in context from speaking on it recently,  
2 it's going to tell you who made changes to the  
3 documents, is what I would assume.

4 MR. RUKAVINA: Go off the record for one  
5 second.

6 (Off the record.)

7 Q. (BY MR. RUKAVINA) So a little bit of error  
8 on my part. We'll have some more metadata, but we can  
9 still talk about 6 and 7.

10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.  
11 Do you recall or do you know who that person was?

12 A. I recognize the name, and it makes sense.  
13 This says Strasburger is the company. I think he was  
14 one of the lawyers that we had used at some point in  
15 time.

16 Q. Strasburger is a law firm?

17 A. Yes.

18 Q. And then it says, so Exhibit 6 created May 3,  
19 Exhibit 7 created May 2, modified, accessed. Does that  
20 to the best of your understanding comport with when  
21 Exhibits 4 and 5 were actually created?

22 A. Can you repeat that.

23 Q. Yeah. We'll wait for the rest of the  
24 metadata. But let's go back to 4 and 5.

25 In and by May 2019 I think you mentioned that



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1 it was your job to, I think you said update promissory  
2 notes?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 Q. (BY MR. RUKAVINA) Let me take that question  
6 back.

7 You testified earlier that your group would  
8 have taken a template and used it to create or prepare  
9 a new promissory note; right?

10 A. Right.

11 Q. How would you call that process? What word  
12 would you use for that process?

13 A. Let's call it papering the loan.

14 Q. In May of 2019, was it your job to paper the  
15 loan?

16 A. Yes.

17 Q. Would anyone else at the corporate accounting  
18 group have been responsible to paper a loan?

19 A. At that time, I don't think so. I think I  
20 was the one doing it.

21 Q. I think you mentioned that you think you  
22 papered the loan, respecting Exhibits 4 and 5; correct?

23 A. Correct.

24 Q. You have no distinct present memory of  
25 papering 4 and 5; correct?

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1 A. Correct.

2 Q. Can you think of anyone else at the corporate  
3 accounting group that would have papered 4 and 5?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: The only other person that  
7 could have would either be Dave Klos or Hayley Eliason.

8 Q. (BY MR. RUKAVINA) What was Hayley's role in  
9 May of 2019?

10 A. She was the accountant. I can't recall her  
11 specific title.

12 Q. Now, in May of 2019 when you papered a loan,  
13 would you have consulted with either internal or  
14 external legal before finishing that loan or presenting  
15 it for signature or anything else?

16 A. Not if it was just our standard demand note  
17 that we already had a template on.

18 Q. So would it have been your general course in  
19 May of 2019, if you prepared Exhibits 4 and 5, not to  
20 seek advice from internal or legal before proceeding  
21 with these notes?

22 A. With these two specific notes?

23 Q. Yes.

24 A. Yes.

25 Q. If we flip the page, I'll represent to you

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1 that Mr. Waterhouse's signature there appears on the  
2 Word document as an image.

3 A. Uh-huh.

4 Q. Do you have any memory of whether there was  
5 an image that someone would have affixed of  
6 Mr. Waterhouse's signature to promissory notes?

7 A. Yes. We typically always -- he was  
8 completely fine with having documentations -- sorry,  
9 having documents signed or executed with his  
10 e-signature.

11 Q. Would these pictures of his signature have  
12 been his e-signature in May of 2019?

13 A. Yes.

14 Q. So let's just clarify that because I don't  
15 want there to be any confusion.

16 I know there's some computer programs out  
17 there that are restrictive and have passwords before  
18 any signature is printed. And then there's some people  
19 that use a stamp or an image; right?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 Q. (BY MR. RUKAVINA) Are you following me?

23 A. I follow you.

24 Q. In May of 2019, did Mr. Waterhouse have any  
25 specific program that would have to -- you would have

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1 to go through before it would spit out his e-signature,  
2 or was he fine with you and his staff using an image  
3 like this?

4 A. He was fine with using his e-signature, and  
5 what is on these documents was that exact e-signature.  
6 So I don't know if he had -- I don't know how it was  
7 created originally.

8 Q. The e-signature?

9 A. E-signature.

10 Q. Do you have any memory with respect to  
11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific  
12 approval to use his e-signature?

13 A. I don't have exact specific memory, same as  
14 conversations on these loans. But he would have had to  
15 approve this loan in the dollar amount, the day.

16 He would have been the one directing us to  
17 create these loans. In past practice he has always  
18 approved using his e-signature to execute documents.

19 Q. How would he have approved Exhibits 4 and 5?  
20 By that, I mean by email or memorandum? How would he  
21 have approved it in May of 2019?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: I would assume that, as I've  
25 stated previously, these directions were coming

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1 directly from him to paper a loan. These changes that  
2 are made are only to the dollar amount. Interest rate  
3 is pulled right off the IRS website.

4 That is his approval to paper a loan and in  
5 fact execute or approve the loan.

6 Q. (BY MR. RUKAVINA) In May of 2019, would  
7 Mr. Waterhouse -- what was his practice as far as using  
8 an ink signature on documents as opposed to an  
9 e-signature? Did he have a practice?

10 MR. MORRIS: Objection to the form of the  
11 question.

12 THE WITNESS: He has never specifically said,  
13 on certain documents I would like to ink it with my  
14 signature. Probably at this time, 99 percent of the  
15 stuff my team got his signature on was his e-signature.  
16 I think it just depended on the group and what it was.

17 Q. (BY MR. RUKAVINA) So how would he authorize  
18 you or your team to use his e-signature for any given  
19 document in May of 2019?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Through the conversations that  
23 would have been had before these emails went out saying  
24 paper loan.

25 Q. (BY MR. RUKAVINA) And -- okay. So, and

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1 after his e-signature was used either on these notes or  
2 other documents in May of 2019, would you have brought  
3 the documents back to him for any kind of verification?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: Probably not. These are all  
7 very standard. We've papered hundreds of loans. So I  
8 think he trusted that we can handle updating a date and  
9 a dollar amount on these loan templates.

10 Q. (BY MR. RUKAVINA) Do you know or believe, or  
11 your recent review of documents, did it reveal an email  
12 from Mr. Waterhouse to you specifically authorizing his  
13 e-signature on Exhibits 4 and/or 5?

14 A. Not that I recall seeing, no.

15 Q. Sitting here today, do you have any memory of  
16 Mr. Waterhouse orally or otherwise specifically  
17 authorizing you to affix his e-signature to Exhibits 4  
18 and/or 5?

19 A. Specifically on these loans, no, I don't  
20 recall those conversations. But, again, our practice  
21 has always been we have this discussion, he's under the  
22 understanding that we're going to paper the loans, he's  
23 always comfortable with using his e-signature.

24 This is not something me or my team would  
25 have done without that authority and approval from him.

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1 Q. But you have no memory of that authority or  
2 approval, specifically for 4 and 5?

3 MR. MORRIS: Objection. Asked and answered  
4 about five times.

5 THE WITNESS: Same as my answer I just gave.

6 Q. (BY MR. RUKAVINA) And I think you mentioned  
7 that in your years at Highland your team papered  
8 hundreds of loans?

9 A. Yeah.

10 Q. In your time at Highland, is it your  
11 testimony that the accounting -- corporate accounting  
12 department never made a mistake with respect to  
13 anything that it did?

14 MR. MORRIS: Objection to the form of the  
15 question.

16 THE WITNESS: No, I did not say that.

17 Q. (BY MR. RUKAVINA) Do you recall any mistakes  
18 in your time at the corporate accounting group at  
19 Highland that had been made, any significant mistakes?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: Significant mistakes, not that  
23 I can recall.

24 Q. (BY MR. RUKAVINA) No accounts payable  
25 mistakenly paid?

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1 MR. MORRIS: Objection to the form of the  
2 question.

3 THE WITNESS: I cannot specifically answer  
4 that question with 17 years of work to recall, sorry.

5 MR. RUKAVINA: Just take a quick break. If  
6 you need a restroom -- off the record.

7 (Off the record.)

8 Q. (BY MR. RUKAVINA) Going back to Exhibits 4  
9 and 5.

10 Mr. Waterhouse signed these promissory notes.  
11 Is there any particular reason why he signed them as  
12 opposed to Dondero or someone else?

13 A. No particular reason. He's an officer for  
14 both companies. He's a signatory.

15 Q. Who decided, if anyone, to your knowledge,  
16 that he would be the one signing the notes, these two  
17 notes?

18 A. I don't know who would have decided that, but  
19 typically if Frank specifically wanted Jim Dondero to  
20 sign it, he would say, take it to Jim to sign.

21 Q. Do you have a recollection of  
22 Mr. Dondero -- strike that.

23 Do you have a recollection of Mr. Waterhouse  
24 signing other promissory notes?

25 A. Yes. I know for sure he has signed other



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1 promissory notes. I can't tell you explicitly which  
2 ones.

3 (Off the record.)

4 Q. (BY MR. RUKAVINA) Are you saying that in May  
5 of 2019 -- strike that.

6 By May of 2019, was it not the standard  
7 practice at the debtor that Mr. Dondero would sign  
8 intercompany promissory notes?

9 MR. MORRIS: Objection to the form of the  
10 question.

11 THE WITNESS: No, that's not standard  
12 practice. Just needed to be somebody -- somebody who  
13 is a signer for the entity on the incumbency  
14 certificate.

15 Q. (BY MR. RUKAVINA) Was there a standard  
16 practice, or did you just describe the standard  
17 practice that it was someone on the incumbency  
18 certificate?

19 A. That's correct, somebody on the incumbency  
20 certificate. Frank is a great prospect to sign, with  
21 giving direction to set loans up, send money out. Why  
22 wouldn't he sign it.

23 Q. Do you have any memory sitting here today of  
24 Mr. Waterhouse telling you or agreeing that he would be  
25 signing these two promissory notes for HCMFA?

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1 A. Not specifically, but he didn't need to tell  
2 me. He typically would tell me if he wanted Jim to  
3 sign them.

4 Q. Sitting here today, do you have any memory of  
5 giving Mr. Waterhouse these two promissory notes after  
6 they were prepared?

7 A. I specifically don't remember walking into  
8 his office and providing it to him, but he could have  
9 found it on our shared drive if he wanted to.

10 Q. Do you have any memory or in your recent  
11 review of documents did you see any email to the effect  
12 of you sending either or both of these promissory notes  
13 to Mr. Waterhouse after they were papered up?

14 A. I don't have any specific recollection,  
15 again, but he had access to look at them.

16 Q. On the shared drive?

17 A. Yes.

18 Q. In May -- I'm going to ask this question  
19 multiple different ways, so let's start with kind of  
20 the general.

21 In May or by May of 2019, was there a  
22 repository, electronic or paper, where the debtor kept  
23 original promissory notes that were owed -- where money  
24 was owed to it?

25 A. Original meaning paper?

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1 Q. Well, let's go back a little bit in time.

2 Would you agree that at some point prior to  
3 2019 the standard course was that paper notes were ink  
4 signed?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: I could not tell you  
8 specifically when notes were or were not ink signed.

9 Q. (BY MR. RUKAVINA) Was there any repository,  
10 to the best of your recollection, as of May 2019 where  
11 any ink-signed original promissory notes were kept by  
12 the debtor?

13 A. No. We always would scan them in, save them  
14 on our shared drive. Never had paper copies.

15 Q. So that's -- fixing to ask that question  
16 next.

17 So Exhibits 4 and 5, would they even have  
18 been printed after they were papered up?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: Possibly. Somebody could have  
22 printed them.

23 Q. (BY MR. RUKAVINA) Do you remember printing  
24 Exhibits 4 or 5 sitting here today?

25 A. I don't recall printing them myself, no.

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1 Q. Would there have been a reason to print them  
2 out if, as you said, the notes were stored  
3 electronically?

4 MR. MORRIS: Objection to the form of the  
5 question.

6 THE WITNESS: There could be a reason. I  
7 don't recall that I for any reason printed these  
8 particular notes.

9 Q. (BY MR. RUKAVINA) So as of May 2019, is it  
10 your testimony that notes that were papered up by the  
11 corporate accounting group would have been saved  
12 electronically on the system and not kept by way of  
13 paper copies in some file?

14 A. Correct. That's right.

15 Q. This is additional metadata. And you  
16 understand I have a bit of an accent.

17 What are we on?

18 (Off the record.)

19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is  
20 going to be additional metadata for the May 3, 2019,  
21 note that we've been looking at, and Exhibit 9 will be  
22 the same thing for the May 2 note that we've been  
23 looking at.

24 That's 8. That's 9.

25 (Whereupon, Exhibits 8 & 9 were marked for

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1 identification.)

2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to  
3 represent to you again that my office has faithfully  
4 printed this metadata out without doctoring or changing  
5 anything, and I ask you to assume that. If I'm wrong  
6 on that, then your answers don't count.

7 Ma'am, as I look at these two documents, it  
8 says last modified by Kristin Hendrix.

9 Do you see that?

10 A. Yes.

11 Q. And that would have -- that could have only  
12 been you; correct, in that department?

13 A. I hope so, yes.

14 Q. Seeing these two documents, can you agree  
15 with me now that it was in fact you that papered up  
16 Exhibits 4 and 5?

17 MR. MORRIS: Objection. Asked and answered.

18 THE WITNESS: I would assume so since my name  
19 is on it, yes.

20 Q. (BY MR. RUKAVINA) Both of these documents  
21 say last printed -- I'm sorry. If you see related  
22 dates, it says last printed May 2, 2019, 11:27 A.M. Do  
23 you have any memory or any understanding as to why that  
24 date would be there or what last printed might mean?

25 A. I don't know why it says last printed the day

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1 before it was created. That doesn't make any sense. I  
2 have no idea.

3 Unless, the only thing I could think of is if  
4 we changed this template. When I say "this," the  
5 \$2.4 million loan, which was papered on the 2nd, and  
6 then used it for the next day for the template to  
7 update the date, possibly. I have no idea.

8 Q. Well, it may be -- and I understand that you  
9 don't have any memory; we're speculating a little bit.

10 It may be, looking at Exhibits 8 and 9, that  
11 the \$2.4 million note was printed on May 2, and then  
12 after having been used as the template for the  
13 \$5 million note, the \$5 million note would not have  
14 been printed.

15 Does that sound possible?

16 MR. MORRIS: Objection to the form of the  
17 question.

18 THE WITNESS: Sure, it could be possible.

19 Q. (BY MR. RUKAVINA) But you don't have any  
20 memory either way?

21 A. No. And when these were printed they're  
22 printed to PDF, I believe, is probably what that means.

23 Q. Okay.

24 We're going to switch gears a little bit now,  
25 if you want to make a pile of those exhibits.

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1 Obviously, you're welcome to use them anytime you need  
2 to, but I think we're done with those notes.

3 Going to hand you what we're going to mark as  
4 Exhibit 10, which is an email chain produced by the  
5 debtor.

6 And I don't know how anyone on the video will  
7 see it. I apologize. I'll have to send it to you  
8 later.

9 (Whereupon, Exhibit 10 was marked for  
10 identification.)

11 Q. (BY MR. RUKAVINA) Now, if you start with  
12 this email chain, it starts on November 19, 2020 from  
13 Jack Donohue to you, copying Mr. Seery and various  
14 others.

15 Do you see that?

16 A. Yes.

17 Q. And Mr. Donohue is asking you to provide him  
18 the financial records of HCMFA due to the funds owed  
19 the debtor.

20 Do you see that?

21 A. Yes.

22 Q. Do you recall that email from Mr. Donohue to  
23 you?

24 A. Yes.

25 Q. Do you recall any context or subsequent

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1 discussions or how that email came to be, or do you  
2 just recall getting that email?

3 A. I just recall getting the email.

4 Q. You write back, hi Jack, Scott Ellington is  
5 going to follow up with the board on this request.

6 Do you see that?

7 A. Yes.

8 Q. Do you recall why you told Jack that  
9 Mr. Ellington was going to follow up?

10 A. From what I recall, I had asked Frank  
11 Waterhouse if it was okay to send these financials  
12 over, and he wanted me to check with Scott Ellington  
13 and that was Scott's response.

14 Q. And did he tell you why he wanted you to  
15 check with Scott Ellington?

16 A. Just to make sure that there were no issues  
17 with sending them over.

18 Q. Mr. Seery writes back, can I get this ASAP.  
19 HCMFA is way overdue.

20 Do you see that?

21 A. Yes.

22 Q. And Mr. Seery writes again, it's about a week  
23 later, and he says, this is an explicit direction from  
24 me as CEO of HCMLP. But it looks like you are the  
25 recipient of that December 2 email; correct?



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1 A. Yes.

2 Q. Do you remember him sending you that email  
3 and copying those people?

4 A. Yes.

5 Q. Do you remember anything happening in that  
6 week between his November 25 and December 2 email along  
7 the same discussion lines?

8 A. I don't remember anything. I think I was  
9 probably left out of any discussions, and if there were  
10 any, it was with Scott Ellington and whomever he had  
11 discussions with.

12 Q. Then subsequent, on December 2, Mr. Seery  
13 writes, all, Scott and I have spoken and agree that the  
14 information should be provided to James immediately.

15 Would that have been James Romey, do you  
16 think?

17 A. Yes.

18 Q. And who was James Romey?

19 A. He also worked for DSI.

20 Q. And then he writes, Kristin, please proceed  
21 with James. If anyone has any questions or issues,  
22 please call me.

23 Do you see that?

24 A. Yes.

25 Q. Did you proceed with James Romey?

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1           A.     I further made sure that Scott was okay, to  
2 confirm. He said yes, please do, and I did send them  
3 to James Romey.

4           Q.     So Mr. Seery has some of it in this email  
5 chain, but do you have any understanding as to why  
6 either DSI or Mr. Seery in November of 2020 was asking  
7 for the financial records of HCMFA?

8           A.     I do not, other than what's in this email.

9           Q.     Did you discuss with either DSI or Mr. Seery  
10 or Mr. Waterhouse in November or December 2020 whether  
11 the demand notes from HCMFA should be demanded, should  
12 be called?

13          A.     I did not have discussions.

14          Q.     Next exhibit is Exhibit 11. This is another  
15 email chain.

16                 And I apologize to the folks on the video.  
17 I'll have to get it to you during some break.

18                 MR. MORRIS: Hold on one second.

19                 MR. RUKAVINA: Sure. Off the record.

20                 (Off the record.)

21                 (Whereupon, Exhibit 11 was marked for  
22 identification.)

23          Q.     (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,  
24 if you'll go to the beginning of this email chain, is  
25 an email on January 6, 2021, again from Mr. Donohue to

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1 you, copying Waterhouse, Seery, a bunch of others.

2 Where he says, at the direction of Jim Seery,  
3 please provide DSI with the requested information for  
4 each entity below.

5 And you'll see the entity includes both of my  
6 clients, NexPoint Advisors and HCMFA. And the  
7 information includes bank statements, income  
8 statements, balance sheets, cash flows.

9 Do you see that?

10 A. Yes.

11 Q. Do you recall this email?

12 A. Vaguely, yes.

13 Q. Did you have any concerns when you received  
14 this email?

15 A. Concerns about the email, no. I probably  
16 checked with -- I would have checked with Frank to make  
17 sure it was okay to send this first.

18 Q. Frank Waterhouse?

19 A. Yes.

20 Q. Do you have any understanding as to why  
21 Mr. Donohue requested bank statements, income  
22 statements, balance sheets for NexPoint and/or HCMFA?

23 A. I do not.

24 Q. Did he or anyone at DSI tell you why they  
25 were requesting that?

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1 A. Not that I can recall.

2 Q. If we go forward in time, you'll see that  
3 Mr. Waterhouse is writing back to Mr. Donohue. And  
4 then Mr. Seery interjects and says, these are HCMLP  
5 business records. Please provide them as requested by  
6 Jack ASAP.

7 Do you see that?

8 A. Yes.

9 Q. And it looks like you were not privy to  
10 subsequent communications where Frank and Jim were  
11 talking back and forth about this. You were not privy  
12 to those, like you weren't blind copied or anything to  
13 your recollection?

14 A. No.

15 Q. Did you in fact on or after January 6, 2021,  
16 provide Mr. Donohue or anyone on his team the  
17 information that he had requested as it relates to  
18 NexPoint and/or HCMFA?

19 A. Without going back to check, I couldn't  
20 answer yes or no for certain.

21 Q. So I think you mentioned when you received  
22 the email from Mr. Donohue you would have checked with  
23 Frank. And what do you remember asking Frank or  
24 checking with him about?

25 A. I don't remember asking him specifically. In

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1 fact, it's possible that Frank just responded on his  
2 own here to Jack. Again, would have been a  
3 conversation that I can't specifically recall.

4 Q. Sure. And you don't specifically remember  
5 today providing Mr. Donohue any of that information;  
6 right?

7 A. Right.

8 Q. You don't specifically remember today having  
9 a discussion with Mr. Donohue or Seery or anyone else  
10 at or about that time as to why they were wanting this  
11 information?

12 A. Correct.

13 Q. Exhibit 12, Ms. Hendrix, is going to be the  
14 December 3, 2020, letter by which Highland called the  
15 notes.

16 MR. MORRIS: Objection to the form of the  
17 question if there was one.

18 (Whereupon, Exhibit 12 was marked for  
19 identification.)

20 Q. (BY MR. RUKAVINA) Are you familiar with  
21 Exhibit 12, Ms. Hendrix?

22 A. No, I haven't seen this.

23 Q. Prior to today, you don't remember seeing  
24 this?

25 A. No.

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1 Q. I think you're answering no?

2 A. No, sorry, no.

3 Q. On or before December 3, 2020, did anyone  
4 discuss with you whether Highland should call the  
5 demand notes that were outstanding by HCMFA?

6 A. No.

7 Q. Do you recall in December 2020 any discussion  
8 with anyone at the debtor about the NexPoint  
9 \$30.7 million term note?

10 A. Repeat your question again, please.

11 Q. Sure. So you're familiar, and we'll talk  
12 about it in some detail, with the NexPoint  
13 \$30.7 million note?

14 A. Yes.

15 Q. And again, we'll talk about it, but at that  
16 point in time that was a term note; correct?

17 A. Correct.

18 Q. Do you remember in the December 2020 or  
19 November 2020 time frame discussing with anyone at the  
20 debtor the status of that NexPoint note?

21 A. Yes, we would have discussed this on a weekly  
22 basis in our cash meetings that we would have had, as  
23 identifying that there are payments due on these loans  
24 in December.

25 Q. What weekly cash meetings are you referring

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1 to?

2 A. We had a standing weekly cash meeting with  
3 Frank Waterhouse, myself, Jim Seery. I can't recall  
4 everyone on it. Some of the DSI folks. We go through  
5 cash forecasts. It's a 13-week cash forecast. We go  
6 through it every week.

7 It's going to lay out incoming and outgoing  
8 payments that are forecasted, of which these term loans  
9 were in those forecasts, so they were discussed.

10 Q. And Mr. Morris produced some of those to me  
11 this morning. I haven't had time to go through them.

12 But it is your recollection in November and  
13 December of 2020 the fact of the NexPoint term note  
14 being out there was known to Mr. Seery?

15 A. Yes.

16 Q. And the fact of an upcoming December 31,  
17 2020, payment was known to Mr. Seery?

18 A. Yes.

19 Q. So with that background, in November and  
20 December of 2020, do you remember discussing with  
21 anyone anything to the effect of, oh, it really would  
22 be better if NexPoint defaulted on that note so we  
23 could call it?

24 A. No.

25 Q. Did Mr. Seery ever state to you anything in

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1 November or December of 2020 about how the debtor might  
2 monetize that NexPoint note?

3 A. No.

4 Q. Did he discuss with you any potential sale of  
5 that promissory note?

6 A. No.

7 Q. Did DSI ever discuss with you in November or  
8 December 2020 any potential sale of that note?

9 A. No.

10 Q. Or how to monetize that note?

11 A. No.

12 Q. So -- well, strike that.

13 Did Mr. Seery or anyone at DSI, or anyone at  
14 all, in November or December of 2020 state any words to  
15 you to the effect that they were hoping that NexPoint  
16 would default on that note?

17 A. Never.

18 Q. Or that it would be in the debtor's interest  
19 for NexPoint to default on that note?

20 A. No.

21 Q. In November or December of 2020, do you  
22 recall having any discussions with Mr. Seery or anyone  
23 at DSI as to the collectibility of that note? And by  
24 that I mean whether NexPoint can pay the note?

25 A. I don't specifically recall. It most likely



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1 came up in cash conversations.

2 Q. I think you were assistant controller back  
3 then?

4 A. Yes.

5 Q. Would a discussion of a borrower's ability to  
6 repay have been something within your general sphere of  
7 responsibility in that time frame?

8 MR. MORRIS: Objection to the form of the  
9 question.

10 THE WITNESS: It depends on who the borrower  
11 is, and at that time we did -- we had knowledge over  
12 that information, so yes.

13 Q. (BY MR. RUKAVINA) Well, you've seen some  
14 instructions or requests from Mr. Seery to you and DSI  
15 to you for financial information of NexPoint and HCMFA.  
16 We've gone through those documents; right?

17 A. Yes.

18 Q. Does that refresh your memory that there was  
19 any internal discussion that you were privy to about  
20 the ability of HCMFA and/or NexPoint to pay these  
21 notes?

22 A. I don't recall that specifically being asked.  
23 It could have.

24 Q. Did you ever at any point in time have any  
25 employment or officer or any title or role with

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1 NexPoint Advisors, LP?

2 A. No.

3 Q. Were you ever the controller or assistant  
4 controller for NexPoint Advisors LP?

5 A. No.

6 Q. Did you ever at any point in time have any  
7 employment, officer or any title or role at HCMFA?

8 A. No.

9 Q. Were you ever the controller or assistant  
10 controller of HCMFA?

11 A. No.

12 Q. So you might have indirectly provided  
13 services to those two as part of shared services, but  
14 never directly; is that fair?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: When you say never directly,  
18 meaning I was not employed by those entities?

19 Q. (BY MR. RUKAVINA) Correct.

20 A. That's correct.

21 Q. Do you have any understanding -- first of  
22 all, NexPoint did not make a payment on December 31,  
23 2020; correct?

24 A. Correct.

25 Q. Okay. Do you have any understanding of why

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1 not?

2 A. Yes.

3 Q. What's your understanding?

4 A. Either November 30 or December 1, 2020, I  
5 received a phone call from Frank Waterhouse that said,  
6 no payments are going from any of the Advisors to  
7 Highland.

8 Q. Can you be more specific with what he said?

9 A. That's what he said.

10 Q. So he said no payments from the Advisors to  
11 Highland?

12 A. Yes.

13 Q. Did he reference the promissory note  
14 expressly?

15 A. No.

16 Q. But no payments means?

17 A. Nothing.

18 Q. That would logically in your mind include the  
19 promissory note?

20 A. Yes.

21 Q. Did you ask him why?

22 A. No.

23 Q. Did he tell you why?

24 A. No.

25 Q. Did you, prior to January 1, 2021, did you

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1 hear from anyone as to why Mr. Waterhouse gave that  
2 instruction?

3 A. Not that I recall.

4 Q. Did you, after that November 30 or December 1  
5 phone call, did you follow up with him or anyone else  
6 about the upcoming note payment?

7 A. I didn't have any reason to.

8 Q. I'm going to -- let me find you a document  
9 for a moment.

10 Just so the record is complete, let's include  
11 this promissory note. It's going to be Exhibit 13.  
12 This is the NexPoint promissory note.

13 (Whereupon, Exhibit 13 was marked for  
14 identification.)

15 Q. (BY MR. RUKAVINA) I take it you've seen this  
16 promissory note, Exhibit 13?

17 A. Yes.

18 Q. And I think you testified about this before,  
19 but just to summarize to save time.

20 This would have been a note that you would  
21 not have papered but would have gone through legal  
22 because it was a roll-up. Is that generally accurate?

23 A. Yes.

24 Q. And do you have any memory at all of having  
25 anything to do with papering up this loan?

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1 A. Not that I recall.

2 Q. Would you have had, after 2017 and before  
3 2021, any role with respect to any payments or upcoming  
4 payments on this note, any role at all?

5 A. Yes.

6 Q. What would have been your role or roles?

7 A. That would have been taking direction from  
8 Frank Waterhouse or possibly Jim Dondero saying, go  
9 ahead and make these payments that are due on these  
10 term notes.

11 Q. Would you have recorded on any books or  
12 records payments that actually were made?

13 A. Not me personally.

14 Q. Who would have?

15 A. Our accountant, which could have been one of  
16 two different people, depending on the time frame.

17 Q. Would you have had any role with respect to  
18 recording those payments or is that just something that  
19 your group would have done?

20 MR. MORRIS: Objection to the form of the  
21 question.

22 THE WITNESS: I would not have had a role.  
23 My group would have.

24 Q. (BY MR. RUKAVINA) What about calculating  
25 amortization and/or interest payments that are due or

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1 upcoming? Who would have done that, you or someone  
2 else?

3 A. Our accountant.

4 Q. Do you have any memory of doing that?

5 MR. MORRIS: Objection to the form of the  
6 question.

7 THE WITNESS: Not during 2017 through 2019.

8 Q. (BY MR. RUKAVINA) What about 2020?

9 A. No.

10 Q. Going back to that November 30 or December 1  
11 telephone call, do you recall who initiated the call?

12 A. To me?

13 Q. The one between you and Mr. Waterhouse.

14 A. Frank called me.

15 Q. Frank called you.

16 And was it just to discuss -- or just to give  
17 you that instruction, no payments from the Advisors, or  
18 was there other things discussed?

19 A. I could not tell you if something else was  
20 discussed on that phone call.

21 Q. Do you remember if it was a long phone call  
22 or short?

23 A. Couldn't tell you.

24 Q. Do you remember where you were when he called  
25 you?

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1 A. At my house.

2 Q. Did you answer on a cell phone or landline?

3 A. My cell phone.

4 Q. Is there any chance in hell that your cell  
5 phone would still have a record of that phone call,  
6 like what time it was and how long it lasted?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 Q. (BY MR. RUKAVINA) I apologize for using  
10 hell.

11 MR. MORRIS: And to foundation.

12 THE WITNESS: I have no idea.

13 Q. (BY MR. RUKAVINA) Do you have your cell  
14 phone with you right now?

15 A. In the other room.

16 Q. I might ask you during the break to just --  
17 we'll take a short break before I'm done, and I'll ask  
18 you if you've had a chance to look for November and  
19 December 2020 phone logs between you and  
20 Mr. Waterhouse. I would ask you to do that, please.

21 A. Sure.

22 Q. And I apologize, I think you said you thought  
23 it was a short telephone call?

24 A. I have no idea.

25 Q. Did the telephone call or Mr. Waterhouse's

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1 instructions surprise you in any way?

2 A. Nothing surprises me anymore, so no.

3 Q. Did it surprise you back in November or  
4 December of 2020?

5 A. No.

6 Q. Did it pique your curiosity?

7 A. Nope.

8 Q. Just another instruction from your boss?

9 A. Yep.

10 Q. Exhibit 14 is going to be a document that  
11 we're not sure what it is and we're not sure who  
12 prepared it. It appears to be a ledger of charges  
13 against and payments on this promissory note.

14 I'm just saying that so the people on the  
15 phone know what it is, but you don't have to take what  
16 I said as correct.

17 (Whereupon, Exhibit 14 was marked for  
18 identification.)

19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14  
20 was produced by the debtor. And I'm going to ask you,  
21 do you know what this is or have you seen it before?  
22 Can you help us state what it is?

23 A. This looks like it is an amortization  
24 schedule of the NexPoint Advisors term loan.

25 Q. Would this have been something that it



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1 appears to you would have been maintained internally by  
2 the debtor, or does it look like it might have been  
3 prepared by DSI or someone else for some other reason?

4 A. It looks like the debtor's amortization  
5 schedule that they kept.

6 Q. Did the debtor keep an amortization schedule  
7 for the NexPoint promissory note, to your knowledge?

8 A. Yes.

9 Q. Did the debtor keep amortization schedules  
10 for other term promissory notes?

11 A. Yes.

12 Q. In what format, like Excel spreadsheets or  
13 Word documents? What is your recollection for NexPoint  
14 specifically?

15 A. Excel.

16 Q. Would that have been on the shared system or  
17 something?

18 A. Yes.

19 Q. And who would have been responsible on an  
20 ongoing basis to update the NexPoint amortization  
21 schedule?

22 MR. MORRIS: Objection to the form of the  
23 question.

24 THE WITNESS: Depends on what time you're  
25 asking.

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1 Q. (BY MR. RUKAVINA) Let's talk about the year  
2 of 2020.

3 A. That would have been Hayley Eliason, our  
4 accountant at that time.

5 Q. What about the year 2019?

6 A. Still Hayley.

7 MR. RUKAVINA: I'm going to just ask, to  
8 preserve the record, Mr. Morris, if he hasn't already,  
9 to produce any such Excel spreadsheet in the native  
10 form.

11 Q. (BY MR. RUKAVINA) If we look at this,  
12 Ms. Hendrix -- and I'm a little confused as to what  
13 these entries mean. Maybe you could help me. But  
14 columns that say interest paid, principal paid, total  
15 paid, do you know what those columns mean?

16 A. Exactly as they state. These are interest  
17 and principal payments made on the date that's listed,  
18 and then you've got a total.

19 Q. And then they're in brackets because they're  
20 negative numbers?

21 A. Correct.

22 Q. So here's what I'm not understanding. Go to  
23 the second page.

24 You see there's an entry under interest paid  
25 12/30/29 [verbatim] that says negative 530,000 and

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1 change but it doesn't use brackets?

2 A. It's a negative number. It's just a  
3 formatting issue.

4 Q. What about also on that same page in the  
5 other column, principal paid, 5/31/2020, it's a  
6 positive number, 575,550.

7 MR. MORRIS: Where are you?

8 MR. RUKAVINA: On page 2 of this exhibit.

9 MR. MORRIS: What date?

10 MR. RUKAVINA: May 31, 2020. And it's the  
11 column over, principal paid. It's a positive number,  
12 575,000 and change.

13 MR. MORRIS: Got it, thank you.

14 Q. (BY MR. RUKAVINA) Do you see that,  
15 Ms. Hendrix?

16 A. Yes.

17 Q. Do you have an understanding of why that  
18 number would be positive?

19 A. Actually, I think this looks like an entry to  
20 me where the interest is what we call picking. So on  
21 the anniversary date of this loan, which is May, from  
22 what I can tell, the accrued interest total, which is  
23 that 575-, is being rolled into principal.

24 That's what I can tell from looking at it.

25 Q. Okay. Do you have any understanding as to

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1 why that would have been done or why that would have  
2 been done on that day?

3 MR. MORRIS: Objection to the form of the  
4 question.

5 THE WITNESS: Because that's the anniversary  
6 date of the loan. I would assume that that's how the  
7 loan is written.

8 Q. (BY MR. RUKAVINA) And I think that that  
9 Section 1 of the promissory note does say, the unpaid  
10 principal balance of this note from time to time  
11 outstanding shall bear interest.

12 At the rate of 6 percent per annum from the  
13 date hereof until maturity date, compounded annually on  
14 the anniversary of the date of this note.

15 Do you see that?

16 MR. MORRIS: Objection to the form of the  
17 question.

18 THE WITNESS: Yeah, I see that.

19 Q. (BY MR. RUKAVINA) Assuming that this is the  
20 correct amortization schedule for the NexPoint note,  
21 and that the numbers in here are correct, if you look  
22 at the second page under the column total paid there  
23 are a number of entries for 2019.

24 Do you see that, the far right column?

25 A. At the top, yes.

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1 Q. For example, 1.3 million, 2.1 million,  
2 1.3 million.

3 Do you see that?

4 A. Yes.

5 Q. Assuming that that's correct, do you have any  
6 memory or understanding whether in the year 2019, or  
7 why NexPoint was making these payments on this  
8 promissory note?

9 A. Without going back and reading through emails  
10 I can only assume that, from looking at this, Highland,  
11 the debtor, would have needed cash, and so this is one  
12 way of getting cash to the debtor.

13 Q. This is kind of like what we discussed in the  
14 beginning, that Mr. Dondero on a cash needed basis  
15 would just transfer money between entities?

16 A. Yes.

17 Q. Do you have any memory in the first half of  
18 2019 whether Highland, the debtor, had any particular  
19 need for cash money at that time?

20 A. We generally always had a need for cash, so  
21 yes.

22 Q. And so if NexPoint was transferring money  
23 back to Highland on this note because Highland needed  
24 the money, would those have been recorded as  
25 prepayments by the debtor?

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1 MR. MORRIS: Objection to the form of the  
2 question.

3 THE WITNESS: Yes.

4 Q. (BY MR. RUKAVINA) Sitting here today, do you  
5 have any reason to believe based on the formatting or  
6 anything on Exhibit 14 that it's not the amortization  
7 schedule as it was maintained by the debtor?

8 A. I don't have any reason to not believe that  
9 it was.

10 Q. Going to show you a few documents that I'm  
11 hopefully going to burn through, but you're certainly  
12 entitled to take all the time that you need.

13 So first is going to be a document that  
14 Mr. Morris produced this morning. It's not Bates  
15 labeled. I don't know why.

16 MR. MORRIS: As I said in my email, my  
17 paralegal is sick and so I wanted you to have the  
18 documents. We'll Bates stamp them later, but we have a  
19 written record from my email of what we produced to  
20 you.

21 MR. RUKAVINA: You're assuming that I read my  
22 emails.

23 MR. MORRIS: Sorry about that. I confess,  
24 sometimes I don't as well.

25 Q. (BY MR. RUKAVINA) So I'm going to hand you

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1 Exhibit 15 and I'm going to represent to you that it's  
2 the email that Mr. Morris sent to me today and I've not  
3 doctored it in any way.

4 (Whereupon, Exhibit 15 was marked for  
5 identification.)

6 MR. MORRIS: Do you have the email that it  
7 was attached to?

8 MR. RUKAVINA: Somewhere. I can find it at a  
9 break.

10 MR. MORRIS: I'll let the witness testify.  
11 This was attached to an email. Not my email, but  
12 another email. But I'll let the witness testify.

13 MR. RUKAVINA: Off the record.

14 (Off the record.)

15 Q. (BY MR. RUKAVINA) So you have Exhibit 15.

16 And during the break we established, I don't  
17 have a copy of it right now, but you sent Exhibit 15 on  
18 August 29, 2020, to Mr. Dondero by email, copying  
19 Mr. Waterhouse, as well as a couple of other  
20 attachments; is that correct?

21 A. Correct.

22 Q. Do you recall what prompted you to send that  
23 email and this attachment?

24 A. Yes.

25 Q. What?

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1 A. Frank Waterhouse called me on August 29, and  
2 requested that I do so.

3 Q. Did he tell you why?

4 A. From what I recall, this was a time when Jim  
5 was trying to come up with his bargain or pop land,  
6 whatever he referenced it as. This was all information  
7 that Frank said he wanted.

8 Q. Okay. So going back to Exhibit 15, what I'm  
9 interested in is NexPoint Advisors, the 23,846,000 and  
10 change number.

11 Do you see that?

12 A. Yes.

13 Q. Where did that number -- or where did this  
14 Exhibit 15 come from, if you understand my question?

15 A. Sure. These numbers should all be balances  
16 off of the corresponding notes that each entity owed to  
17 the debtor.

18 Q. Did you or someone prepare Exhibit 15  
19 specifically for that email? Or was Exhibit 15 already  
20 existing somewhere on the system?

21 A. I believe that we prepared it specifically  
22 for this request.

23 Q. Do you recall who?

24 A. It was either myself or our accountant. I  
25 don't recall who put it together.



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1 Q. Okay. And where would that 23 million and  
2 change number for NexPoint have come from, an  
3 amortization schedule?

4 A. Yes.

5 Q. And what about Highland Capital Management  
6 Fund Advisors? You see \$10.5 million and change demand  
7 on Exhibit 15?

8 A. Yes.

9 Q. Where would that \$10.5 million number have  
10 come from, do you remember?

11 A. The same. It would have come off of the  
12 amortization schedules for all of their notes.

13 Q. How was there an amortization schedule for a  
14 demand note?

15 A. Because it's accruing interest.

16 Q. So sitting here today, you expect there would  
17 be some amortization schedule like Exhibit 14 but for  
18 HCMFA?

19 A. Yes.

20 Q. Now we're going to have an exhibit [verbatim]  
21 chain that's going to be marked as Exhibit 16.

22 (Whereupon, Exhibit 16 was marked for  
23 identification.)

24 MR. RUKAVINA: For the folks on the video,  
25 Exhibit 16 is the email chain that Mr. Morris used last

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1 week regarding the Section 15(c) document.

2 Q. (BY MR. RUKAVINA) Are you familiar with this  
3 Exhibit 16 email chain, Ms. Hendrix?

4 A. Yes.

5 Q. Why are you familiar with it?

6 A. Well, I'm copied on it, and I saw it  
7 yesterday.

8 Q. Do you have any memory -- well, that's a  
9 stupid question. But prior to yesterday, did you have  
10 any memory of this?

11 A. Yes.

12 Q. And do you recall the context or the purpose  
13 of this exhibit, or this email chain?

14 A. From what I remember this is the time where  
15 information was being prepared for the retail board to  
16 re-up the debtor's shared services.

17 Q. So, here -- you're certainly welcome to read  
18 it in its entirety and if you feel like you want to or  
19 need to, that's fine. But I only have one question.  
20 Well, one question with two subparts.

21 I'm looking at Ms. Lauren Thedford's,  
22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]  
23 where she says, I see the below from the 6/30  
24 financials. NPA, due to HCMLP and affiliates as of  
25 June 30, 2020.

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1 Do you see that, ma'am?

2 A. Yes.

3 Q. 23 million 683?

4 A. Yes.

5 Q. And you see, HCMFA due to HCMLP as of  
6 June 30, 2020, 12,286,000?

7 MR. MORRIS: Objection to the form of the  
8 question.

9 Q. (BY MR. RUKAVINA) Strike that.

10 It says 12,286. What do you take that 12,286  
11 to mean?

12 A. I think that's a typo and it should have  
13 said -- well, there's several things wrong with this,  
14 from looking at it.

15 She left off three zeros on the end of it.  
16 Should have said 12,286,000. Secondly, that amount is  
17 our due to affiliates on HCMFA's books, not just due to  
18 HCMLP.

19 Q. That was going to be my question, why that  
20 12,286,000 number didn't jive with the 10,530,000  
21 number on Exhibit 15?

22 A. Yes, there's another loan due to a different  
23 affiliate.

24 Q. So that \$12,286,000 amount doesn't mean that  
25 it's all due to Highland; is that correct?

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1 A. Correct.

2 Q. Exhibit 17 is going to be the January 7, 2021  
3 notice from the debtor to NexPoint about the default.

4 (Whereupon, Exhibit 17 was marked for  
5 identification.)

6 Q. (BY MR. RUKAVINA) You've been handed  
7 Exhibit 17. Have you seen this document before?

8 A. Not that I believe.

9 Q. And I think we've asked this before, but just  
10 to clarify.

11 Did anyone at the debtor, including Mr. Seery  
12 or DSI, discuss with you after December 31, 2020 that  
13 the payment had not been made and what, if anything,  
14 the debtor should do about that?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I can't recall specific  
18 conversations that may or may not have been had around  
19 that topic.

20 Q. (BY MR. RUKAVINA) Would -- so back then you  
21 were the assistant controller, on January 7; right?

22 A. Yes.

23 Q. Do you think that back then Mr. Seery or DSI  
24 would have sought your advice or input as to what they  
25 should do about the missed payment?

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1 A. No.

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: No.

5 Q. (BY MR. RUKAVINA) That would have been  
6 outside of your purview?

7 A. Yes.

8 Q. And you see in this notice in the middle, it  
9 says an amount due as of January 8 in the \$24,471,000  
10 range.

11 Do you see that?

12 A. Yes.

13 Q. Do you have any idea, I take it you don't,  
14 where that number came from?

15 MR. MORRIS: Objection to the form of the  
16 question.

17 THE WITNESS: I don't know who provided that  
18 number or where it came from.

19 Q. (BY MR. RUKAVINA) Do you have any  
20 understanding as to why that number is higher than the  
21 number on Exhibit 15?

22 A. My guess would be that Exhibit 15 is just  
23 principal balances.

24 Q. Okay.

25 Exhibit 18, please.

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1 (Whereupon, Exhibit 18 was marked for  
2 identification.)

3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,  
4 is an email chain between you and Mr. Waterhouse on  
5 January 12, 2021. Do you remember this email chain?

6 A. No.

7 Q. Do you remember on January 12 Mr. Waterhouse  
8 emailing you, asking when the last amort payment due  
9 and what the amount was for NexPoint?

10 A. No.

11 Q. When was the last time -- well, strike that.  
12 Do you remember ever seeing this email  
13 between then and today?

14 A. No.

15 Q. Do you have any present memory of any  
16 communications with Mr. Waterhouse on or about  
17 January 12, 2021 regarding the NexPoint default or  
18 note?

19 A. Not specific, no.

20 Q. Any general memory?

21 A. Not that I can pinpoint, no.

22 Q. Were you aware that on or about January 14  
23 NexPoint transferred about \$1.4 million and change to  
24 the debtor?

25 A. Yes.

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1 Q. Were you aware of it then?

2 A. Was I aware of what?

3 Q. That transfer of \$1.4 million and change.

4 A. On January 14?

5 Q. Yes.

6 A. Yes.

7 Q. Did you facilitate that transfer?

8 A. Yes.

9 Q. Who told you to make that transfer?

10 A. Frank Waterhouse.

11 Q. Did he tell you why?

12 A. Nope.

13 Q. He just said make the transfer?

14 A. Yes.

15 Q. Did he tell you that it was on account of the  
16 NexPoint note?

17 A. Yes.

18 Q. Did he tell you how to, if at all, to credit  
19 that note for that amount?

20 A. No.

21 Q. Sitting here today, you have no memory other  
22 than that Frank Waterhouse told you to transfer some  
23 \$1.4 million on the NexPoint note?

24 A. Right.

25 Q. And do you recall, was that oral or written

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1 or how would that have been?

2 A. That was a phone call.

3 Q. Do you recall who initiated the phone call?

4 A. Frank called me.

5 Q. Was that the only topic discussed in that  
6 phone call to your memory?

7 A. Yes.

8 Q. Did you ask him why the payment or  
9 anything -- did you ask him anything at all?

10 A. No.

11 Q. And after you made the payment -- or I'm  
12 sorry, after you caused the payment to be made, did you  
13 take any further steps with respect to the NexPoint  
14 note?

15 A. I forwarded the payment confirmation, showing  
16 that the money was sent from NexPoint Advisors to  
17 Highland, forwarded that payment confirmation from the  
18 bank to Jack Donohue at DSI, letting him know.

19 Q. Did you let Mr. Donohue or anyone at DSI know  
20 about the transfer before the transfer was made?

21 A. No.

22 Q. And you sent that by email to Mr. Donohue?

23 A. Yes.

24 Q. Did Mr. Donohue thereafter have any  
25 discussion with you about that in any way?



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1 A. I have no idea.

2 Q. He didn't ask what this was for or anything  
3 like that?

4 A. He may have asked what the amount  
5 represented. I can't specifically recall. But it's  
6 possible.

7 Q. Okay. Do you recall any discussion about  
8 that time, January 14, with Mr. Donohue or  
9 Mr. Waterhouse or anyone as to whether that payment  
10 would in any way relieve NexPoint of the default or  
11 would not relieve NexPoint of the default?

12 A. No.

13 Q. Ms. Hendrix, I believe that I am done. I  
14 would like you, however, because it's important, to  
15 check your phone. Would you like a short, five-minute  
16 restroom break and just check --

17 A. Yeah, and I might need help figuring out how  
18 to do that.

19 Q. I'm not saying that it's possible, but I'm  
20 going to ask you on the record to look for that  
21 November 30 or December 1, 2020 phone call.

22 MR. MORRIS: We're happy to do that.

23 Q. (BY MR. RUKAVINA) But what I would like if  
24 you find it, I would like you to tell me the time, the  
25 date and the length of that call.

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1 A. Okay.

2 Q. Thank you.

3 We'll be back in five minutes.

4 (Off the record.)

5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the  
6 break did you look at your phone?

7 A. I did.

8 Q. Did you find anything?

9 A. Sadly, it only goes back to October 5 of  
10 2021.

11 Q. Not surprised. Thank you.

12 Have I been courteous to you today?

13 A. Yes.

14 MR. RUKAVINA: I pass the witness.

15 MR. MORRIS: Thank you.

16 MR. AIGEN: Are we ready to move forward?

17 MR. MORRIS: Yes. You're a little dark  
18 there.

19 MR. RUKAVINA: Can we increase the volume on  
20 that thing?

21 (Off the record.)

22 EXAMINATION

23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.  
24 My name is Michael Aigen. I represent Mr. Dondero,  
25 HCMS and HCRE Partners in several of the adversary

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1 proceedings today.

2 I'm going to try to ask you some questions  
3 about these adversary proceedings. I'll try to make it  
4 as quick as possible so we don't keep you here.

5 You understand that you're still under oath;  
6 is that correct?

7 A. Correct.

8 Q. First topic I want to ask you about is one of  
9 the defenses in this case related to an oral agreement.  
10 Let me start off with this question.

11 Are you aware that some of the defendants in  
12 these adversary proceedings have raised a defense that  
13 there was a subsequent oral agreement allowing the  
14 notes at issue to be potentially forgiven if certain  
15 events occurred?

16 A. I've recently been made aware that this came  
17 up, yes.

18 Q. When you say recently, approximately when?

19 A. Within the last week.

20 Q. And where did you learn that from?

21 A. In my speakings with John Morris just  
22 preparing for today.

23 MR. AIGEN: And John, I'm going to assume  
24 that those conversations are privileged?

25 MR. MORRIS: That's a very fair assumption.

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1 Q. (BY MR. AIGEN) Other than the conversation  
2 you just referred to with Mr. Morris, have you ever had  
3 any other conversations with anyone about this alleged  
4 oral agreement that Defendants are contending occurred?

5 A. No.

6 Q. So prior to that conversation with Mr. Morris  
7 you weren't even aware of this alleged defense related  
8 to an oral agreement. Is that fair to say?

9 A. That's right.

10 Q. This is a similar question but slightly  
11 different, just to sort of finish this topic. I'm not  
12 asking about this oral agreement as a defense, I'm just  
13 asking more generally.

14 Other than this conversation, were you aware  
15 generally of any conversations that anyone had where  
16 the notes at issue might be forgiven if certain events  
17 occurred?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: No.

21 Q. (BY MR. AIGEN) Is it fair to say that you  
22 haven't had any conversations about this subsequent  
23 oral agreement with anyone other than Mr. Morris?

24 A. That's fair.

25 Q. You never discussed it with Mr. Seery?

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1 A. No.

2 Q. Never discussed it with Mr. Klos?

3 A. No. Well, sorry, Mr. Klos was present when  
4 John and I talked about it. But that's it.

5 Q. Have you ever made any investigation or  
6 effort in order to determine if this oral agreement  
7 actually occurred?

8 A. No.

9 Q. If there was such an oral agreement to  
10 potentially forgive the notes, do you believe that you  
11 would have known about such an oral agreement as part  
12 of your duties and responsibilities?

13 A. Yes, I would hope so.

14 Q. Why do you say that?

15 A. That's something that should be disclosed in  
16 audited financial statements, and me and my team are  
17 responsible for preparing those financial statements  
18 and presenting them to the auditors as fair and  
19 accurate.

20 Q. And is it fair to say that this oral  
21 agreement should have been disclosed to PwC if it was  
22 determined that it was material?

23 A. Yes.

24 Q. And have you done any sort of analysis to  
25 determine whether the oral agreement at issue here

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1 would have been material for purposes of a PwC audit?

2 A. I've not done any work, just finding out  
3 about it, but from what it sounds like, it would be  
4 material.

5 Q. That's your opinion, that it would have been  
6 material; is that fair to say?

7 A. Fair.

8 Q. Have you had any discussions with anyone else  
9 about whether the oral agreement would have been  
10 material?

11 A. No.

12 Q. Changing topics a little bit here, are you  
13 aware --

14 (Off the record.)

15 Q. (BY MR. AIGEN) Are you aware that a few of  
16 the loans at issue here, specifically related to HCMS  
17 and HCRE, were term loans as opposed to demand loans?

18 A. Yes.

19 Q. And are you aware that for those particular  
20 loans, there were payments that were supposed to be  
21 made but weren't on December 31, 2020?

22 A. Yes.

23 Q. Do you have any understanding as to why those  
24 payments weren't made with respect to the HCMS and HCRE  
25 term loans on December 31, 2020?

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1 A. Yes.

2 Q. Can you tell me why?

3 A. Sure. It goes along with the same statement  
4 as HCMFA and NPA and the phone call that I got from  
5 Frank Waterhouse saying there's no payments coming from  
6 any of the affiliates to the debtor.

7 Q. I may have written that down wrong when you  
8 talked about that before, but I believe your earlier  
9 testimony when you described that conversation was that  
10 there was no more payments coming from the Advisors,  
11 not affiliates.

12 Let me ask you then, what was the  
13 conversation? Was it no more payments from affiliates  
14 or Advisors?

15 A. It could have been either. I probably did  
16 say Advisors. But regardless, those payments would  
17 have been directed to me to be made, either by Frank  
18 Waterhouse or Jim Dondero.

19 And I would assume that nobody directed me to  
20 make those payments because we weren't making any  
21 payments from Jim's related parties. I don't know for  
22 a fact, but that's what I would assume. Those were all  
23 under the same umbrella.

24 Q. And again, let's back up a second.

25 When you refer to Advisors, fair to say that

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1 that does not include HCMS and HCRE; is that correct?

2 A. When I say Advisors, I am referring to HCMFA  
3 and NPA.

4 Q. And when you use the term "affiliates,"  
5 you're referring to all four; is that correct?

6 A. Correct.

7 Q. Just want to make sure we're on the same  
8 page.

9 When you answered the previous question you  
10 started to get into assumptions and things like that.  
11 Let me start off with what your specific recollection  
12 of that phone call was. Tell me as best as you can  
13 what you remember Frank telling you?

14 A. I remember it as being no payments from the  
15 Advisors to the debtor.

16 Q. So you don't remember the instruction being,  
17 don't make payments from the affiliates. It was, don't  
18 make payments from the Advisors; is that correct?

19 A. Correct.

20 Q. So is it fair to say that you don't remember  
21 any instructions telling you not to make any payments  
22 from HCMS or HCRE?

23 A. That's fair.

24 Q. So if that is the case, why weren't payments  
25 made from HCMS or HCRE for December 31, 2020, payment?



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1           A.     Sure. Typically what would have happened is  
2 Frank would be talking to Jim Dondero about making  
3 these payments and getting his approval to do so,  
4 because Jim Dondero is, you know, directing payments  
5 out of these entities.

6           I have never -- had never been given the  
7 direction to effectuate those payments by anybody.

8           Q.     Is it fair to say, then, that you're not  
9 aware of any instructions from anyone saying that the  
10 HCMS and HCRE payments should not be made on  
11 December 31, 2020?

12          A.     That's fair.

13          Q.     So the reason the payments weren't made is  
14 because you never got an affirmative instruction to  
15 actually make that payment; is that correct?

16          A.     Correct.

17          Q.     And you're not aware of Mr. Dondero  
18 instructing anyone that HCMS and HCRE should not have  
19 made the December 31, 2020, payments; is that correct?

20          A.     I'm not aware personally, no. Correct.

21          Q.     You say personally. In any way are you aware  
22 of such a specific instruction?

23          A.     No.

24          Q.     If that payment was to be made, who at the  
25 debtor would have been responsible for making those

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1 payments on behalf of HCMS and HCRE?

2 MR. MORRIS: Objection to the form of the  
3 question.

4 THE WITNESS: The corporate accounting team.

5 Q. (BY MR. AIGEN) And that included you?

6 A. Yes.

7 Q. And in December of 2020, were you aware that  
8 those payments were due on December 31, 2020?

9 A. Yes.

10 Q. Did you make any attempts or efforts to  
11 determine whether Mr. Dondero wanted those payments to  
12 be made?

13 A. I did not, no.

14 Q. Why not?

15 A. That would have been something that Frank  
16 Waterhouse would have done directly with Jim Dondero  
17 himself.

18 Q. Did you have any conversations with anyone  
19 about whether the December 31 payments for HCMS and  
20 HCRE would be made in December of 2020?

21 A. Not that I can recall.

22 Q. And you didn't think it was your  
23 responsibility to check on those payments and find out  
24 if they should have been made?

25 A. Right, correct.

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1 Q. And is that because it's only your job to  
2 make payments that you're told to specifically make; is  
3 that correct?

4 A. Yes, in this case, that is correct.

5 Q. Is it fair to say then that as part of your  
6 job responsibilities you've never made a payment to  
7 anyone without being specifically told by Mr. Dondero  
8 and Mr. Waterhouse?

9 A. Sorry, say that again.

10 Q. As part of your job responsibilities, have  
11 you ever made a payment to anyone without the specific  
12 instruction of Mr. Waterhouse or Mr. Dondero?

13 MR. MORRIS: Objection to the form of the  
14 question.

15 THE WITNESS: Yes, we make payments all the  
16 time.

17 Q. (BY MR. AIGEN) So why is this different in  
18 that this payment was not made without the specific  
19 instructions from Mr. Waterhouse and Mr. Dondero, even  
20 though you believed the payment was due on December 31,  
21 2020?

22 A. The difference between making a loan payment  
23 and making normal course -- or sorry, normal, ordinary  
24 course, you know, overhead expense payments is that  
25 something like that is not necessarily what we would

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1 take to Jim Dondero to approve.

2 He doesn't have time to approve every single  
3 overhead payment that we're making out of every single  
4 entity. That's what Frank is for.

5 Something that's once a year that's more  
6 material in amount, such as a loan payment, that is  
7 something that needs to get approved by Jim Dondero.

8 Q. You say needs to get approved. What's your  
9 basis for that, something in a policy manual, something  
10 someone told you?

11 A. It's a policy that my team followed. I don't  
12 think that it's written in an actual manual anywhere,  
13 but anything that's not ordinary course needs to get  
14 approved by Jim Dondero.

15 Q. Is that something that's written in a policy  
16 anywhere?

17 A. Not that I know of.

18 Q. Were you ever told that payments in the  
19 ordinary course can be made without Mr. Dondero's  
20 approval but loan payments cannot?

21 A. Yes, I do recall years ago that Frank and I,  
22 possibly Jim, this was years ago, had a conversation  
23 that anything ordinary course is up to Frank to  
24 approve. And this is, quite frankly, up to Frank.

25 Whatever he felt Jim needed to sign off on,

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1 that's what Jim would sign off on. This was not my  
2 responsibility to make that decision.

3 Q. And in December -- prior to the December 31,  
4 2020, due date you didn't have any conversations with  
5 anyone about whether this -- these payments that were  
6 due should be made; is that correct?

7 A. Correct.

8 Q. And you didn't try to check with anyone to  
9 see whether anyone wanted these payments to be made; is  
10 that correct?

11 A. Correct.

12 Q. Subsequent to the payment being missed, did  
13 you ever have any conversations with anyone about why  
14 the payment was not made?

15 A. Not that I recall.

16 Q. So is it fair to say that sitting here today  
17 you have no idea why the payments were not made for  
18 HCMS and HCRE on December 31, 2020?

19 MR. MORRIS: Objection to the form of the  
20 question.

21 THE WITNESS: I don't have any specific  
22 evidence telling me why they weren't. I can make  
23 assumptions but that's not going to help.

24 Q. (BY MR. AIGEN) Well, did you ever have any  
25 conversations with anyone about why those payments were

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1 not made?

2 A. No.

3 Q. You have no idea why they weren't made other  
4 than just speculation; is that fair to say?

5 A. Correct.

6 MR. MORRIS: Objection. Asked and answered.

7 THE WITNESS: Correct.

8 Q. (BY MR. AIGEN) And are you aware that with  
9 respect to those two loans, some payments were actually  
10 made in the next month, in January of 2021?

11 A. Yes.

12 Q. What role, if any, did you have with respect  
13 to those payments?

14 A. Frank Waterhouse would call me and tell me to  
15 have my team effectuate a wire.

16 Q. And you say would call you. Do you remember  
17 this conversation or are you just assuming it occurred?

18 MR. MORRIS: Objection to the form of the  
19 question.

20 THE WITNESS: If we sent a payment out, Frank  
21 would have told me to do it. I would not have done it  
22 on my own.

23 Q. (BY MR. AIGEN) Sitting here today, do you  
24 have a specific recollection of the conversation where  
25 someone told you to make the January 2021 payments?

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1 A. I can't tell you the exact date, but, yes, I  
2 do have a recollection of Frank calling or emailing me  
3 to have, I believe it was the HCRE wire sent out for  
4 their payment.

5 Q. What about the HCMS payment?

6 A. I don't recall that one as much.

7 Q. Other than the payment being made, do you  
8 have any recollection of any other conversations about  
9 why the payment was being made?

10 A. No.

11 Q. Are you aware of any conversations that  
12 anyone had regarding whether these payments would  
13 deaccelerate loans?

14 A. No.

15 Q. Is that something you would normally be part  
16 of, conversations like that?

17 A. No.

18 Q. Changing topics here. Not sure if this is an  
19 area that you know anything about.

20 Are you familiar with the term, as it's used  
21 at Highland, NAV ratio trigger period?

22 A. No.

23 Q. This may go very quick. If I represent to  
24 you that it's a term that's used in the -- in the  
25 fourth amended limited partnership agreement for

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1 Highland Capital Management, would that refresh your  
2 recollection at all?

3 A. No.

4 Q. Fair to say, then, that you have no knowledge  
5 as to whether NAV ratio trigger period was ever reached  
6 at any time prior to bankruptcy buyouts?

7 A. No, I don't know.

8 Q. Have you ever had any conversations with  
9 Nancy Dondero?

10 A. I have not.

11 Q. Never met her?

12 A. No. I may have exchanged an email with her  
13 on an invoice, but that's the extent of it. No  
14 conversations.

15 Q. In the years leading up to the bankruptcy of  
16 Highland Capital, was there any time period where  
17 Highland was unable to pay its salaries?

18 A. Salaries?

19 Q. Salaries of its employees?

20 A. No.

21 Q. In the time leading up to the Highland  
22 bankruptcy, was there any time period where Highland  
23 wasn't able to pay bonuses owed to any of its  
24 employees?

25 A. Not that I know of. Not that I can recall.



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1 Q. Are you aware of any time period leading up  
2 to the Highland bankruptcy where Highland was unable to  
3 pay its bills?

4 A. There's times where we would be in a cash  
5 flow crunch and we would stretch our AP, but eventually  
6 it would get paid.

7 Q. And I think this is the last topic and we can  
8 probably move through this pretty quickly.

9 Are you aware of any loans made by Highland  
10 to any of its employees or officers that were forgiven  
11 in part or all?

12 A. Yes.

13 Q. Which officers or employees are you aware of?

14 A. I recall there were two employees. I can't  
15 remember one of them, but I believe another, the second  
16 one, was Paul Adkins. Again, I'm just recalling this  
17 was years ago.

18 Q. And these two are the only ones you're aware  
19 of?

20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.  
21 It's possible Paul Adkins was the other one, but I  
22 can't tell you for sure.

23 Q. Tim Lawler and some other employee that you  
24 can't remember the name of are the only two that you're  
25 aware of?

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1 A. Yes.

2 Q. This other employee, I know you don't  
3 remember the name. Is there any other description that  
4 you can give me, what their position was, how long they  
5 worked, or is it just you remember those loans?

6 A. I just remember we had two employee loans.

7 Q. Approximately when was this?

8 A. I couldn't even tell you. All the years just  
9 commingle together.

10 Q. More than five years ago?

11 A. Yes.

12 Q. More than 10 years ago?

13 A. I couldn't say.

14 MR. AIGEN: Why don't we take a five-minute  
15 break and then I'll either be done or have just a few  
16 wrap-up questions.

17 MR. RUKAVINA: Okay.

18 (Off the record.)

19 FURTHER EXAMINATION

20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of  
21 2019, would you on behalf of Highland alone,  
22 unilaterally, have the authority to lend to HCMFA 2.4-  
23 and/or \$5.0 million?

24 A. No.

25 Q. And would you have had any authority on

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1 behalf of HCMFA in May of 2019 to bind HCMFA to such  
2 notes?

3 A. No.

4 Q. Thank you, ma'am.

5 EXAMINATION

6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out  
7 of your pile, Exhibit Number 3.

8 And this is the email from Dave Klos to  
9 corporate accounting on May 2nd concerning the  
10 \$2.4 million that was going to be transferred from  
11 HCMLP to HCMFA?

12 A. Yes.

13 Q. And how did Mr. Klos characterize that  
14 transfer?

15 A. He called it a new intercompany loan.

16 Q. What does a new intercompany loan mean to  
17 you?

18 A. That means we are creating a new loan  
19 document, sending money out, tracking it as a  
20 brand-new, fresh loan.

21 Q. And he sent this email to an email group  
22 called corporateaccounting@hcmlp.com. Do I have that  
23 right?

24 A. Yes.

25 Q. Were you included in that email group?

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1 A. I was.

2 Q. Can you identify everybody else who you  
3 recall being in that email group?

4 A. Yes.

5 Q. Who else was in that email group?

6 A. Dave Klos, Frank Waterhouse, myself, Hayley  
7 Eliason, and Blair Roeber.

8 Q. Okay. Did Mr. Waterhouse ever tell anybody,  
9 to the best of your knowledge, in May 2019 that the  
10 transaction should not be booked as a loan?

11 A. No, not to my knowledge.

12 Q. You testified earlier that there was, you  
13 recall, a similar email the next day with respect to a  
14 \$5 million transaction.

15 Do you recall that?

16 A. Yes.

17 Q. Do you recall if that email also went to  
18 corporate accounting?

19 A. I believe so, yes.

20 Q. And to the best of your knowledge, would  
21 Mr. Waterhouse have been informed on May 3, 2019, that  
22 the transaction was being booked by the corporate  
23 accounting department as a loan?

24 A. Yes.

25 Q. Did Mr. Waterhouse tell you at that time or

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1 at any time thereafter that it was a mistake to book it  
2 as a loan?

3 A. No.

4 Q. Did Mr. Waterhouse tell you at that time or  
5 at any time thereafter that he didn't intend to sign  
6 the promissory notes?

7 A. No.

8 MR. RUKAVINA: Objection. To the last  
9 question, objection to form.

10 Go ahead.

11 Q. (BY MR. MORRIS) Okay. The promissory notes,  
12 to be clear, are the two promissory notes that you  
13 testified to earlier that have been marked as exhibits  
14 in this deposition for \$5 million and \$2.4 million  
15 respectively.

16 With that definition as promissory notes, did  
17 Mr. Waterhouse ever tell you at any time that it was a  
18 mistake to sign those notes?

19 MR. RUKAVINA: I'll object to the form.

20 Go ahead.

21 THE WITNESS: No.

22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or  
23 anybody -- withdrawn. I'll go back to the first  
24 question.

25 Did Mr. Waterhouse or anybody in the world

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1 ever tell you at any time since May of 2019 that it was  
2 a mistake to issue the promissory notes as we've  
3 defined them?

4 A. No.

5 Q. Did Mr. Waterhouse or anybody in the world  
6 tell you that Mr. Waterhouse wasn't authorized to affix  
7 his signature to those promissory notes?

8 MR. RUKAVINA: And I'll object. Assumes  
9 facts not in evidence, i.e., the signature. That's  
10 what I've been objecting to.

11 But go ahead and answer.

12 THE WITNESS: Say it again.

13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or  
14 anybody in the world tell you at any time that he  
15 wasn't authorized to have his signature affixed to the  
16 promissory notes?

17 MR. RUKAVINA: Same objection.

18 THE WITNESS: No.

19 Q. (BY MR. MORRIS) Did you have anything to do  
20 with Highland's annual audit?

21 A. Yes.

22 Q. What role did you play with respect to  
23 Highland's annual audit?

24 A. I personally was in charge of completely  
25 writing the entire audit report for the debtor and for

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1 HCMFA. I oversaw all other aspects of the audit my  
2 team carried out.

3 Any requests from the auditors, emails with  
4 questions, any issues that arose, all of that went  
5 through me.

6 Q. And did Mr. Waterhouse play a role in  
7 relation to the annual audit?

8 A. Yes.

9 Q. What is your understanding of  
10 Mr. Waterhouse's role?

11 A. Let's see. He was in charge of reviewing the  
12 financial statements as they were done, so he saw the  
13 end product. He would sign off on the management rep  
14 letter. He signed engagement letters.

15 If there were any big issues, those got --  
16 those would be brought to Frank's attention for sure.

17 Q. Okay. And are you a CPA?

18 A. Yes.

19 Q. And are you familiar with management rep  
20 letters?

21 A. Yes.

22 Q. What is your understanding of what a  
23 management rep letter is?

24 A. That's basically telling the auditors that  
25 everything in the audited financial report is accurate

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1 to the best of their knowledge, they've presented  
2 everything that they have fair and accurately, they're  
3 not withholding any information.

4 Q. And do you recall that the -- Highland's 2018  
5 audit was completed in early June 2019?

6 A. Yes.

7 Q. And did you cause the two promissory notes  
8 that we're talking about here to be delivered to  
9 PricewaterhouseCoopers in connection with the audit?

10 A. Yes.

11 Q. And were those two promissory notes delivered  
12 to PricewaterhouseCoopers because they constituted  
13 subsequent events?

14 A. Yes.

15 Q. Do you recall whether those promissory notes  
16 were described in Highland's 2018 audited financial  
17 statements?

18 A. Yes.

19 Q. And did Mr. Waterhouse or Mr. Dondero ever  
20 tell you at any time that there was a mistake in the  
21 audited financial statements?

22 A. No.

23 Q. Did they ever tell you -- did Mr. Waterhouse  
24 or Mr. Dondero or anybody in the world ever tell you at  
25 any time that the two notes were mischaracterized in



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1 the 2018 audited financial statements of Highland  
2 Capital?

3 A. No.

4 Q. Do you know whether HCMFA also had its annual  
5 financial statements audited by PricewaterhouseCoopers?

6 A. Yes.

7 Q. Did you play any role in connection with that  
8 audit?

9 A. Yes.

10 Q. What role did you play in connection with  
11 HCMFA's audit of the 2018 financial statements?

12 A. Same exact role as with the debtors --

13 Q. And --

14 A. -- writing the audit report, overseeing all  
15 other audit functions.

16 Q. And did you and your group cause HCMFA to  
17 deliver to PricewaterhouseCoopers the two promissory  
18 notes that we've been discussing from May 2019?

19 A. Yes.

20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody  
21 in the world ever tell you that it was a mistake to  
22 deliver those promissory notes to PwC in connection  
23 with HCMFA's 2018 audit?

24 A. No.

25 Q. Were those notes delivered -- withdrawn.

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1 Were those notes delivered to  
2 PricewaterhouseCoopers because they constituted  
3 subsequent events in connection with the 2018 audit?

4 A. Yes.

5 Q. Do you recall whether PricewaterhouseCoopers  
6 included as a liability on HCMFA's balance sheet the  
7 obligations reflected in the two promissory notes at  
8 issue?

9 MR. RUKAVINA: Objection. Best evidence.  
10 Answer.

11 THE WITNESS: On the 2018 financials?

12 Q. (BY MR. MORRIS) Correct.

13 A. Those would not have been included as  
14 liabilities in the 2018 financials.

15 Q. Do you know if HCMFA completed their audit  
16 for 2019?

17 A. No.

18 Q. Okay. Did the notes appear in HCMFA's 2018  
19 audited financials under the subsequent events section?

20 A. Yes.

21 MR. RUKAVINA: Objection. Best evidence.  
22 Go ahead.

23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did  
24 Mr. Waterhouse or Mr. Dondero or anybody in the world  
25 ever tell you that it was a mistake to include

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1 reference to these notes in HCMFA's 2018 audited  
2 financial statements?

3 MR. RUKAVINA: Same objection.

4 THE WITNESS: No.

5 Q. (BY MR. MORRIS) Okay. Do you recall, did  
6 anybody in the world ever tell you that the  
7 transactions described in Exhibit 3 and the other  
8 document that you recall should never have been booked  
9 as a loan?

10 A. No.

11 Q. Did anybody in the world tell you that you  
12 made a mistake when you created those promissory notes?

13 A. No.

14 Q. Can you pull out what was marked as  
15 Exhibit 16.

16 Do you understand that the Advisors provide  
17 services to certain retail funds?

18 A. Yes.

19 Q. And do you recall that the services are  
20 subject to an agreement that's subject to annual  
21 review?

22 A. Yes.

23 Q. So looking at Exhibit 16, did you understand  
24 that the retail board had asked Highland to disclose --  
25 I'll just read it from the document on page 2,

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1 Bates number ending 881.

2 There's an email from Ms. Thedford that says,  
3 quote, are there any material amounts -- withdrawn.

4 Are there any material outstanding amounts  
5 currently payable or due in the future, open paren,  
6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint  
7 Advisors or any other affiliate that provides services  
8 to the funds?

9 Do you see that?

10 A. Yes.

11 Q. And were you generally aware that that was  
12 part of the annual renewal process?

13 A. Yes.

14 Q. And you made some comments earlier about  
15 Ms. Thedford's response on the first page.

16 Do you recall that?

17 A. Yes.

18 Q. And you actually were able to correct certain  
19 mistakes that you perceived in her response.

20 Do I have that right?

21 A. Correct.

22 Q. Do you know -- do you see where it says,  
23 HCMFA due to HCMLP as of June 30, 2020, let's just call  
24 it \$12.3 million.

25 Do you see that?

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1 A. Yes.

2 Q. And above that there is a reference to the  
3 6/30 financials.

4 Do you see that?

5 A. I do.

6 Q. Do you know what the reference to the 6/30  
7 financials is?

8 A. Yes.

9 Q. And what is that reference?

10 A. That is referencing the amounts on the  
11 balance sheet at 6/30 that we provided for the 15(c)  
12 materials to the board.

13 Q. Okay. And does that \$12.3 million include,  
14 to the best of your knowledge, the principal amount of  
15 the two notes that we were talking about?

16 A. Yes.

17 MR. RUKAVINA: Objection. Best evidence.

18 THE WITNESS: Yes.

19 Q. (BY MR. MORRIS) And how do you know that?

20 A. Because I kept their financials, I know for a  
21 fact that it included all of their outstanding notes  
22 and it most certainly included these two notes that  
23 we've been talking about today.

24 Q. And to the best of your recollection did  
25 HCMFA provide the 6/30 financials to the retail board?

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1 A. Yes.

2 Q. And to the best of your knowledge did  
3 Mr. Dondero or Mr. Waterhouse or anybody in the world  
4 ever tell you that the financial statements that were  
5 provided to the retail board were erroneous in any way?

6 A. No.

7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody  
8 in the world ever tell you that the 6/30 financials  
9 that were given to the retail board should not have  
10 included the \$7.4 million principal amount on the two  
11 promissory notes?

12 MR. RUKAVINA: Objection. Best evidence.

13 Answer.

14 THE WITNESS: No.

15 Q. (BY MR. MORRIS) Do you know whether -- are  
16 you at all familiar with the Advisors' actual response  
17 to the retail board in October 2020?

18 A. Say that again, please.

19 Q. So this email string is October 2020; right?

20 A. Right.

21 Q. And do you understand that this is kind of a  
22 discussion between Mr. Waterhouse and Ms. Thedford as  
23 to how to respond?

24 A. Yes.

25 Q. Have you ever seen the actual response that

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1 was given to the retail board?

2 A. I likely did. I can't tell you for certain  
3 that I was on the correspondence.

4 Q. Do you recall any discussion at any time that  
5 the \$12.3 million number in Ms. Thedford's email should  
6 be changed in the final report to the retail board?

7 A. I don't believe so.

8 Q. Did anybody ever tell you at any time that  
9 the \$12.3 million number was incorrect?

10 A. No.

11 Q. Did anybody ever tell you at any time that  
12 that number wrongly included the \$7.4 million reflected  
13 in the two notes?

14 A. No.

15 Q. Okay. Do you recall that earlier that  
16 summer -- we looked at Exhibit 15?

17 A. Yep.

18 Q. And that was an attachment to an email that  
19 you personally sent to Mr. Dondero. We saw that  
20 before?

21 A. Right.

22 Q. And this Exhibit 15, which was attached to  
23 your email, identifies amounts due and owing from  
24 NexPoint Advisors; right?

25 A. Right.

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1 Q. And it identifies amounts due and owing for a  
2 number of different entities, including HCMFA; right?

3 A. Correct.

4 Q. Do you know whether the amount included for  
5 HCMFA on Exhibit 15 included the principal amount due  
6 on the two promissory notes?

7 A. It does.

8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask  
9 you why -- withdrawn.

10 Did Mr. Dondero or Mr. Waterhouse ever ask  
11 you how the \$10.5 million number was calculated?

12 A. No.

13 Q. Did Mr. Dondero or Mr. Waterhouse ever  
14 suggest to you that the number was incorrect?

15 A. No.

16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody  
17 in the world ever question the number that you gave to  
18 Mr. Dondero in the summer of 2020 concerning the  
19 principal amount due by HCMFA to HCMLP?

20 A. No.

21 Q. Have you ever made a payment -- withdrawn.

22 Have you ever caused a payment to be made in  
23 connection with an intercompany loan without receiving  
24 the prior approval from either Frank Waterhouse or  
25 Mr. Dondero?



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1 A. No.

2 Q. Has anybody ever said to you that you made a  
3 mistake in applying a payment against principal or  
4 interest due on an intercompany loan?

5 A. No.

6 Q. We saw this morning, and we produced to  
7 Mr. Rukavina and he mentioned earlier, 13-week  
8 forecasts? Do you understand that?

9 A. Yes.

10 Q. Did you review the 13-week forecasts  
11 recently?

12 A. Yes.

13 Q. And we're talking specifically about the  
14 13-week forecasts for the November/December 2020 time  
15 period. Do you understand that?

16 A. Yes.

17 Q. Based on your review of those forecasts, did  
18 those forecasts specifically identify the principal and  
19 interest that were due on the three term notes as of  
20 December 28, 2020?

21 A. Yes.

22 Q. And what was the purpose of creating the  
23 13-week forecasts?

24 A. Sure. That was to keep everybody informed  
25 who was on the cash call, Frank Waterhouse, Jim Seery

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1 and others, keep everybody informed of upcoming  
2 payments that were due on term loans well in advance.

3 Everybody knew about it. It was out there  
4 for everybody to see that was on these cash calls.

5 Q. Now, is it your understanding that  
6 Mr. Waterhouse -- withdrawn.

7 Did you email these forecasts -- withdrawn.

8 Did anybody email these forecasts to the best  
9 of your recollection in late 2020?

10 A. Yes.

11 Q. And was it sent to the corporate accounting  
12 group that we saw earlier?

13 A. It was probably sent to Frank, Seery, the DSI  
14 guys that were involved with the cash call.

15 Q. Okay. And so did you participate in the  
16 creation of the 13-week forecasts?

17 A. Yes.

18 Q. What role did you play in the creation of the  
19 13-week forecasts?

20 A. I was responsible for creating the entire  
21 thing.

22 Q. Okay. And based on the work that you did,  
23 was one of the purposes to make sure that  
24 Mr. Waterhouse was aware of all payments that were  
25 coming due under the intercompany notes?

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1 A. Yes.

2 Q. And was that information that was included on  
3 the reports to Mr. Waterhouse?

4 A. Yes.

5 Q. And do you recall whether there were any  
6 specific discussions in November or December of 2020  
7 concerning those payments -- withdrawn. That wasn't a  
8 good question.

9 Did Mr. Waterhouse or -- withdrawn.

10 Did anybody on behalf of HCMS or HCRE ever  
11 instruct you to make the payments that were due under  
12 their term notes?

13 A. No.

14 Q. Did anybody on behalf of NexPoint ever  
15 instruct you to make a payment that was due at year end  
16 with respect to the NexPoint term note?

17 A. No.

18 Q. Were you authorized to make those payments  
19 without the prior approval of either Mr. Waterhouse or  
20 Mr. Dondero?

21 A. No.

22 Q. I think you testified that there were certain  
23 payments that were made in January 2001 under each of  
24 the three term notes.

25 Do I have that right?

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1 A. Correct.

2 MR. RUKAVINA: 2021.

3 MR. MORRIS: Thank you very much.

4 Q. (BY MR. MORRIS) With that amendment, do you  
5 understand my question?

6 A. Yes.

7 Q. Do you know why the three payments were made  
8 in January of 2021 on each of three term notes?

9 A. Because Frank Waterhouse instructed me to do  
10 so.

11 Q. And he had not instructed you to make those  
12 payments prior to that time?

13 A. Correct.

14 Q. Did you have to prompt Frank Waterhouse in  
15 January of 2021 to make those payments?

16 A. No.

17 Q. So based on the 13-week forecast that you  
18 prepared and delivered to Mr. Waterhouse, is it your  
19 understanding that Mr. Waterhouse knew as early as mid  
20 November 2020 that payments would be due under the  
21 three term notes at the end of the year?

22 A. Yes.

23 Q. And, in fact, did HCMS and HCRE and NexPoint  
24 timely make their installment payments that were due at  
25 year end 2018?

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1 A. Yes.

2 Q. And was that done because HCMLP received the  
3 instructions of somebody authorized to give the  
4 instruction on behalf of those entities?

5 A. Yes.

6 Q. Did HCMS and HCRE and NexPoint timely make  
7 the installment payments that were due at year end  
8 2019?

9 A. Yes.

10 Q. And why did they make those payments?

11 A. Because we were provided instruction and  
12 authorization to do so.

13 Q. Okay. And is the only reason that the  
14 payment wasn't made at year end 2020 because nobody on  
15 behalf of the Advisors -- withdrawn.

16 Is the only reason that no payment was made  
17 at the end of 2020 is because no one on behalf of  
18 NexPoint, HCRE, or HCMS directed HCMLP to make those  
19 payments?

20 A. Correct.

21 MR. AIGEN: Objection. Form.

22 Q. (BY MR. MORRIS) And you testified earlier to  
23 a call that you had with Mr. Waterhouse. I think you  
24 said it was either November 30 or December 1.

25 Do you recall that?

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1 A. Yes.

2 Q. And did you personally continue to prepare  
3 the 13-week forecasts after your conversation with  
4 Mr. Waterhouse?

5 A. Yes.

6 Q. And did those 13-week forecasts continue to  
7 include the payments that were due under the three term  
8 notes at the year end?

9 A. Yes.

10 Q. And that's information that you gave to  
11 Mr. Waterhouse; is that right?

12 A. Right.

13 Q. Mr. Rukavina elicited from you the fact that  
14 payments of principal hadn't been made on demand notes  
15 that were executed in favor of Mr. Dondero's  
16 affiliates.

17 Do you recall that?

18 A. Yes.

19 Q. Okay. Was that a topic of conversation with  
20 PricewaterhouseCoopers at any time?

21 A. Yes.

22 Q. Can you tell me about that conversation?

23 A. Sure. As part of our annual audit, the  
24 auditors would, you know, make sure that our  
25 receivables are collectible. And if they thought for

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1 any reason they weren't, then they were going to raise  
2 an issue, a going concern issue.

3 That came up several years in a row with  
4 HCMFA.

5 Q. Do you recall that the three term notes at  
6 issue here were all signed on May 31, 2017?

7 A. Yes.

8 Q. And all of those term notes involved a  
9 roll-up of previously issued demand notes; is that  
10 right?

11 A. Correct.

12 Q. Do you know why in -- at the end of May 2017  
13 NexPoint, HCRE, and HCMS rolled up their demand notes  
14 into individualized term notes?

15 A. Yes.

16 Q. What is your understanding as to why that  
17 happened?

18 A. That would get the auditors a little bit more  
19 comfort over our outstanding loans, ensuring that we  
20 have an amortization schedule, an underlying contract,  
21 showing that payments will be coming in every year on  
22 these outstanding receivables.

23 Q. Okay. As the person responsible for  
24 preparing Highland's audit, did anybody ever tell you  
25 at any time that any of the notes were not valid

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1 obligations of the maker?

2 A. No.

3 Q. As the person responsible for Highland's  
4 audit, did anybody ever tell you at any time that any  
5 of the notes at issue should not have been signed?

6 A. No.

7 Q. As the person responsible for Highland's  
8 audit, did anybody ever tell you at any time that any  
9 of the notes at issue were signed by mistake?

10 A. No.

11 Q. Did anybody ever tell you at any time that --  
12 withdrawn.

13 As the person responsible for Highland's  
14 audit, did anybody ever tell you at any time that  
15 Mr. Dondero didn't approve of any of the notes?

16 A. No.

17 Q. As the person responsible for Highland's  
18 audit, did anybody ever tell you at any time that  
19 the -- any of the notes at issue were subject to an  
20 oral agreement?

21 A. No.

22 Q. As the person responsible for Highland's  
23 audit, did anybody ever tell you at any time that any  
24 of the notes were amended?

25 A. No.



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1 Q. As the person responsible for Highland's  
2 audit, did anybody ever tell you at any time that any  
3 of the notes would be forgiven?

4 A. No.

5 Q. During your 15 years at Highland, has an  
6 intercompany loan ever been forgiven in whole or in  
7 part?

8 A. No.

9 Q. During your -- withdrawn.

10 Can you recall any note that Highland ever  
11 held as the payee that was forgiven in whole or in part  
12 in the five years prior to bankruptcy, go back to 2014?

13 A. No.

14 Q. Is it your understanding as the person  
15 responsible for Highland's audit that the forgiveness  
16 of notes, if they were in a material amount, would have  
17 had to have been disclosed in the audited financial  
18 statements?

19 A. Yes.

20 Q. So is it fair to say that any evidence of the  
21 forgiveness of material amounts would have been  
22 disclosed in Highland's financial statements?

23 A. Yes.

24 MR. MORRIS: I have no further questions.

25 MR. RUKAVINA: I have none.

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1 MR. AIGEN: None.

2 MR. RUKAVINA: Okay. Thank you very much.

3 (Whereupon, the deposition adjourned at  
4 1:19 P.M.)

5 --oOo--

6 I declare under penalty of perjury that the  
7 foregoing is true and correct. Subscribed at

8 \_\_\_\_\_, Texas, this \_\_\_\_ day of  
9 \_\_\_\_\_, 2021.

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13 KRISTIN HENDRIX

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CERTIFICATE OF REPORTER

I, BRANDON D. COMBS, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: November 1, 2021



Brandon Combs, Certified Shorthand Reporter No. 10927 in and for the  
HCMFA APP 0584

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My commission expires 1-31-23

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